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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Sometribove Zinc Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Monsanto Co. which provides for subcutaneous injection of sometribove zinc suspension in healthy lactating dairy cows to increase the production of marketable milk with no restriction on injection site. Three injection sites are recommended.

DATES: This rule is effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0221, e-mail: *ssechen@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167, filed a supplement to NADA 140–872 that provides for the use of POSILAC 1 STEP (sometribove zinc suspension) in healthy lactating dairy cows to increase the production of marketable milk. The supplemental NADA provides for subcutaneous injection with no restriction on injection site. Three injection sites are recommended: The neck area, the postscapular region, or the depression on either side of the tailhead. The application is approved as of December 27, 2001, and the regulations are amended in § 522.2112 (21 CFR 522.2112) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 522.2112 is also being amended to provide for changes to the conditions of use approved November 4, 1997. These changes included the use of sometribove zinc suspension beginning during the 9th or 10th week after calving, and the removal of, or changes in, precautionary statements from labeling pertaining to certain reproductive disorders.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2112 is amended by revising the section heading and paragraph (a), by removing paragraph (c), by redesignating paragraph (d) as paragraph (c), and by revising newly redesignated paragraphs (c)(1) and (c)(3) to read as follows:

§ 522.2112 Sometribove zinc suspension.

(a) *Specifications.* Each single-dose syringe contains 500 milligrams (mg) sometribove zinc in a prolonged-release suspension.

* * * * *

(c) *Conditions of use*—(1) *Amount.* Inject 500 mg every 14 days beginning during the 9th or 10th week (57 to 70 days) after calving and continue until the end of lactation.

* * * * *

(3) *Limitations.* For use in lactating dairy cows only. Safety to replacement bulls born to treated dairy cows has not been established. Administer subcutaneously. To minimize injection site blemishes on carcass at time of slaughter, avoid injections within 2 weeks of expected slaughter. No milk discard or preslaughter withdrawal period is required. Use may result in reduced pregnancy rates and, in first calf heifers, an increase in days open. The incidence of retained placenta may be higher. Treated cows are at an increased risk for clinical mastitis and subclinical mastitis. In some herds, use has been associated with increases in somatic cell counts in milk. Care should be taken to differentiate increased body temperature due to use of this product from an increased body temperature that may occur due to illness. Use may result in an increase in digestive disorders such as indigestion, bloat, and diarrhea. There may be an increase in the number of cows experiencing periods of ''off-feed'' (reduced feed intake) during treatment. Cows treated with this product may have increased numbers of enlarged hocks and lesions of the knee (carpal region), and second lactation or older cows may have more disorders of the foot region. Use has been associated with reductions in hemoglobin and hematocrit values during treatment. Human warning: Avoid prolonged or repeated contact with eyes and skin.

Dated: March 21, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Vetrinary Medicine.

[FR Doc. 02–9015 Filed 4–12–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Furosemide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of furosemide solution by intramuscular or intravenous injection in horses, cattle, dogs, and cats.

DATES: This rule is effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–293 that provides for veterinary prescription use of Furosemide Injection 5% by intramuscular or intravenous administration in horses, cattle, dogs, and cats. Phoenix's Furosemide Injection 5% is approved as a generic copy of Intervet, Inc.'s LASIX Injectable Solution, approved under NADA 34–478. ANADA 200–293 is approved as of December 18, 2001, and the regulations are amended in 21 CFR 522.1010 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1010 [Amended]

2. Section 522.1010 *Furosemide* is amended in paragraph (b)(3) by removing ''No. 057926'' and by adding in its place ''Nos. 057926 and 059130''.

Dated: March 1, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–9014 Filed 4–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 252

[T.D. ATF–477]

RIN 1512–AC44

Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule places ATF authorities concerning the exportation of liquors with the ''appropriate ATF officer'' and requires that persons file documents required with the ''appropriate ATF officer'' or in accordance with the instructions for the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director and the word ''region'' in reference to ATF. Concurrently with this Treasury Decision, ATF Order 1130.27 is being issued and will be available to the public as specified in this rule. Through this order, the Director has delegated all of the authorities concerning the exportation of liquors to the appropriate ATF officers and specified the ATF officers with whom applications, notices, and other reports, which are not ATF forms, are filed.

EFFECTIVE DATE: This rule is effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Room 5003, Washington, DC 20226 (telephone 202–927–8210 or e-mail to *alctob@atfhq.atf.treas.gov*).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 51 of the Internal Revenue Code of 1986 (IRC) and the Federal Alcohol Administration (FAA) Act. The Director has subsequently delegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain which particular officer is authorized to perform a particular function under chapter 51 of the IRC or the FAA Act, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 252 that were previously delegated and places those authorities with the ''appropriate ATF officer.'' Most of the authorities of the Director that were not previously delegated are also placed with the ''appropriate ATF officer.'' Along with this final rule, ATF is publishing ATF Order 1130.27, Delegation of the Director's Authorities

in 27 CFR part 252, Exportation of Liquors, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 252 into one delegation instrument. This action both simplifies the process for determining which ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the specific ATF officer with whom an ATF form is filed. This action is taken because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 252 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the ''appropriate ATF officer'' identified in ATF Order 1130.27. These changes will help identify the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to Subpart A—Scope of 27 CFR Part 252. First, a new § 252.4 is added to recognize the authority of the Director to delegate regulatory authorities in part 252 and to identify ATF Order 1130.27 as the instrument reflecting such delegations. Second, § 252.2 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF has made or will make similar changes in delegations to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings.

Corrections and Miscellaneous Changes

In the definition of ''district director of customs'' in 27 CFR 252.11 we have removed the repetition of the word ''district''.

In four sections of part 252, we are correcting references of ''part 240'' to ''part 24.''

Throughout 27 CFR part 252, we are revising ATF form numbers to reflect the correct numbers as shown on the following table:

Form No.	Revised form No.
700	5120.36
1582–A	1582–A (5120.24)
1582–B	1582–B (5130.6)
1689	1689 (5130.12)
2177	2177 (5110.58)
2605	2605 (5120.20)
2635	2635 (5620.8)
2734	2734 (5100.25)
2735	2735 (5100.30)
2736	2736 (5100.12)
2737	2737 (5110.67)
2738	2738 (5110.68)

We are removing § 252.195a since any claims filed for drawback on spirits tax determined before January 1, 1980, should have been filed.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 252

Administrative practice and procedure, Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation, Vessels, Warehouses, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

§§ 252.2 and 252.20 [Amended]

Par. 2. Remove the word ''Director'' each place it appears and add, in substitution, the words ''appropriate ATF officer'' in the following places:

(a) Section 252.2(a); and

(b) Section 252.20(a)(2) introductory text, (a)(3) and (a)(4).

Par. 3. Amend § 252.2 by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 252.2 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (*http://www.atf.treas.gov/*).

Par. 4. In Subpart A—Scope, a new § 252.4 is added as follows:

§ 252.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 252 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.27, Delegation of the Director's Authorities in this part 252, Exportation of Liquors. ATF delegation orders, such as ATF Order 1130.27, are available to any

interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (*http://www.atf.treas.gov/*).

Par. 5. Section 252.11 is amended by:

a. Removing the definitions of ''ATF officer'', ''Region'', and ''Regional Director (compliance)''; and

b. Adding a new definition of ''Appropriate ATF officer'' and revising the definition of ''Bonded wine cellar'' and removing the definition of ''District district director of customs'' and adding in its place a definition of ''District director of customs'' to read as follows:

§ 252.11 Meaning of Terms.

* * * * *

Appropriate ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.27, Delegation of the Director's Authorities in 27 CFR Part 252, Exportation of Liquors.

* * * * *

Bonded wine cellar. Premises established under part 24 of this chapter for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxpaid wine.

* * * * *

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, NY), the area directors of customs in the district of New York, NY, and the port director at a port not designated as a headquarters port.

* * * * *

Par. 6. Amend § 252.20 by revising the heading and the first and second sentences of paragraph (a)(1) and revising paragraph (c) to read as follows:

§ 252.20 Alternate methods or procedures and emergency variations from requirements.

(a) *Alternate methods or procedures*—(1) *Application.* An exporter, after receiving approval from the appropriate ATF officer, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. An exporter wishing to use an alternate method or procedure may apply to the appropriate ATF officer. * * *

* * * * *

(c) *Withdrawal of approval.* If the appropriate ATF officer finds the revenue is jeopardized or the effective administration of this part is hindered by the approval, such ATF officer may withdraw approval for an alternate method or procedure or for an emergency variation from requirements, approved under paragraph (a) or (b) of this section.

§§ 252.20, 252.22, 252.36, 252.37, 252.38, 252.43, 252.52a, 252.55, 252.56, 252.58, 252.62, 252.67, 252.70, 252.71, 252.72, 252.74, 252.96, 252.103, 252.117, 252.122, 252.123, 252.125, 252.131, 252.146, 252.147, 252.162, 252.171, 252.195b, 252.211, 252.218, 252.221, 252.226, 252.265, 252.266, 252.269, 252.275, 252.282, 252.285, 252.290, 252.301, 252.302, 252.303, 252.304, 252.310, 252.315, 252.316, 252.317, 252.320, 252.321, 252.331, 252.332, 252.333 and 252.335 [Amended]

Par. 7. Remove the words ''regional director (compliance)'', ''regional director's (compliance)'', or ''regional directors (compliance)'' and add, in substitution, the words ''appropriate ATF officer'', ''appropriate ATF officer's'' or ''appropriate ATF officers'', respectively, each place it occurs in the following places:

a. Section 252.20(b)(1), (b)(2) introductory text and (b)(3);
b. The last two sentences of § 252.22;
c. The undesignated paragraph of § 252.36;
d. Section 252.37;
e. Section 252.38;
f. Section 252.43(a)(6) and (b)(3);
g. Section 252.52a;
h. Section 252.55;
i. The introductory text of § 252.56;
j. The last sentence of § 252.58(c);
k. Section 252.62(b);
l. Section 252.67;
m. Section 252.70;
n. Section 252.71;
o. The second and third sentences of § 252.72;
p. Section 252.74;
q. Section 252.96;
r. Section 252.103(b);
s. The last sentence of § 252.117;
t. Section 252.122(c) and (d);
u. Section 252.123(b);
v. Section 252.125;
w. The last sentence of § 252.131;
x. Section 252.146;
y. The last sentence of § 252.147;
z. The last sentence of § 252.162;
aa. The last sentence of § 252.171;
bb. Paragraphs (b) and (c) of § 252.195b;
cc. The last sentence of § 252.211;
dd. Section 252.218;
ee. The last sentence of § 252.221;
ff. Section 252.226;
gg. The second sentence of § 252.265;
hh. Section 252.266;
ii. Section 252.269(c);
jj. Section 252.275;
kk. Section 252.282;
ll. The third sentence of § 252.285;
mm. The last sentence of the introductory text of § 252.290;
nn. Section 252.301;
oo. Section 252.302;
pp. The last sentence of § 252.303;
qq. Section 252.304;
rr. Section 252.310;
ss. Section 252.315;
tt. Section 252.316;
uu. The last sentence of § 252.317;
vv. Section 252.320;
ww. Section 252.321;
xx. Section 252.331;
yy. Section 252.332;
zz. Section 252.333; and
aaa. Section 252.335.

§§ 252.22, 252.36, 252.65, 252.214, 252.215, 252.218, 252.220, 252.220a, 252.250, 252.261, 252.264, 252.265, 252.267, 252.269, 252.275, 252.281, 252.290, 252.331 and 252.333 [Amended]

Par. 8. Add the numbers and parentheses ''(5120.24)'' after the characters ''1582–A'' each place they occur in the following places:

a. Section 252.22;
b. Section 252.36(c);
c. Section 252.65;
d. Section 252.214;
e. Section 252.215;
f. Section 252.218;
g. Section 252.220(b);
h. Section 252.220a;
i. Section 252.250(a)(4);
j. Section 252.261;
k. Section 252.264;
l. Section 252.265;
m. Section 252.267;
n. Section 252.269(a), (b) and (c);
o. Section 252.275;
p. Section 252.281;
q. Section 252.290 introductory text:
r. Section 252.331; and
s. Section 252.333.

§§ 252.22, 252.36, 252.43, 252.222, 252.225, 252.226, 252.227, 252.261, 252.264, 252.265, 252.267, 252.269, 252.275, 252.282, 252.290, 252.295 and 252.333 [Amended]

Par. 9. Add the numbers and parentheses ''(5130.6)'' after the characters ''1582–B'' each place they occur in the following places:

a. Section 252.22;
b. Section 252.36(c);
c. Section 252.43(a)(1), (a)(2), (b)(1) and (b)(2);
d. Section 252.222;
e. Section 252.225 introductory text;
f. Section 252.226;
g. Section 252.227;
h. Section 252.261;
i. Section 252.264;
j. Section 252.265;
k. Section 252.267;
l. Section 252.269(a) and (c);
m. Section 252.275;
n. Section 252.282;
o. Section 252.290 introductory text;
p. Section 252.295; and

q. Section 252.333.

§§ 252.22, 252.36, 252.43, 252.142, 252.146, 252.147, 252.261, 252.264, 252.265, 252.267, 252.269, 252.275, 252.282; 252.290, 252.295 and 252.320 [Amended]

Par. 10. Add the numbers and parentheses ''(5130.12)'' after the numbers ''1689'' each place they occur in the following places:

a. Section 252.22;
b. Section 252.36(c);
c. Section 252.43(a)(1), (a)(2), (b)(1) and (b)(2);
d. Section 252.142;
e. Section 252.146;
f. Section 252.147;
g. Section 252.261;
h. Section 252.264;
i. The last sentence of § 252.265;
j. The third sentence of § 252.267;
k. Section 252.269(a) and (c);
l. Section 252.275;
m. Section 252.282;
n. Section 252.290 introductory text;
o. Section 252.295; and
p. Section 252.320(a).

Par. 11. In the seventh sentence of § 252.22 remove the words ''to the regional director (compliance) designated thereon'' and add, in substitution, the words ''according to its instructions''.

Par. 12. In the first sentence of § 252.23 remove the words ''Assistant regional commissioners'' and add, in substitution, the words ''The appropriate ATF officer''.

§§ 252.35 and 252.36 [Amended]

Par. 13. Remove the words ''regional director (compliance) of the region in which the zone is located'' and add, in substitution, the words ''appropriate ATF officer'' each place they occur in the following places:

a. Second sentence of § 252.35; and
b. Introductory text of § 252.36.

Par. 14. In § 252.36(c) remove the words ''claim number assigned thereto by the regional director (compliance)'' and add, in substitution the words ''ATF assigned claim number''.

§§ 252.45 and 252.104 [Amended]

Par. 15. Add the word ''appropriate'' before the words ''ATF officer'' or ''ATF officers'' each place it appears in the following places:

a. Section 252.45; and
b. The second sentence of § 252.104;

Par. 16. Revise § 252.51 to read as follows:

§ 252.51 General.

Every person required by this part to file a bond or consent of surety must prepare and execute it on the prescribed form and file it in accordance with its instructions and the procedures of this part. The procedures in parts 19, 24 or 25 of this chapter govern bonds covering distilled spirits plants, bonded wine cellars and breweries, respectively.

Par. 16. In the first sentence of § 252.57 remove the words ''regional director (compliance)'' and add, in substitution, the words ''appropriate ATF officer''.

Par. 17. In § 252.59 remove the number ''700'' and add, in substitution the number ''5120.36'' each place it appears.

§§ 252.61, 252.62, 252.63 and 252.64 [Amended]

Par. 18. Remove the words ''with the regional director (compliance)'' each place they occur in the following places:

a. The first sentence of § 252.61;
b. Section 252.62(a);
c. Section 252.63; and
d. The first two sentences of § 252.64(a).

Par. 19. In § 252.62(c) remove the words ''for approval by the Director of Industry Operations (DIO)'' and add, in substitution, the words ''in accordance with its instructions''.

§§ 252.63, 252.70 and 252.73 [Amended]

Par. 20. Add the numbers and parentheses ''(5100.12)'' after the numbers ''2736'' each place they appear in the following places:

a. Section 252.63;
b. Section 252.70; and
c. Section 252.73(a).

§§ 252.64, 252.71, 252.72 and 252.73 [Amended]

Par. 21. Add the numbers and parentheses ''(5110.67)'' after the numbers ''2737'' each place they occur in the following places:

a. Section 252.64;
b. Section 252.71;
c. Section 252.72; and
d. Section 252.73(b).

Par. 22. In the last sentence of § 252.64(b) remove the words ''for approval by the regional regulatory administrator'' and add, in substitution, the words ''in accordance with its instructions''.

Par. 23. In the introductory text of § 252.65 remove the words ''by the regional regulatory administrator'' and the words ''with the regional regulatory administrator''.

§§ 252.65, 252.71, 252.72, 252.73, 252.250 and 252.331 [Amended]

Par. 24. Add the numbers and punctuation ''(5110.68)'' after the numbers ''2738'' each place they occur in the following places:

a. Section 252.65;
b. Section 252.71;
c. Section 252.72;
d. Section 252.73(b);
e. Section 252.250 introductory text; and
f. Section 252.331.

§§ 252.70, and 252.73 [Amended]

Par. 25. Add the numbers and parentheses ''(5120.25) after the numbers ''2734'' each place they occur in the following places:

a. Section 252.70; and
b. Section 252.73(a).

§§ 252.71, 252.72 and 252.73 [Amended]

Par. 26. Add the numbers and parentheses ''(5100.30)'' after the numbers ''2735'' each place they occur in the following places:

a. Section 252.71;
b. Section 252.72; and
c. Section 252.73(b).

Par. 27. In the first sentence of § 252.72 remove the words ''regional director (compliance) in whose office the bond is on file'' and add, in substitution, the words ''appropriate ATF officer''.

Par. 28. In § 252.92(a) remove the phrase ''to the regional director (compliance) of the region in which the distilled spirits plant is located'' and add, in substitution, the words ''in accordance with instructions for the form''.

Par. 29. Amend § 252.104 by:

a. In the third sentence by removing the words ''The issuing'' and adding, in substitution, the words ''Such''; and
b. In the third and fourth sentences adding the numbers and parentheses ''(5110.58) after the numbers ''2177''.

Par. 30. In the introductory text of § 252.116 remove the words ''regional director (compliance) for the region in which the plant is located'' and add, in substitution the words ''appropriate ATF officer''.

Par. 31. Revise § 252.122(a) and (b) to read as follows:

§ 252.122 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, transfer to a customs bonded warehouse, and transfer to a foreign-trade zone.* Where the exporter is not the proprietor of the bonded wine cellar from which the wine is to be withdrawn, the exporter must make an application on ATF Form 5100.11 for approval of the withdrawal. Where the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn, the exporter must, at the time of withdrawal of the wine, prepare

a notice of the withdrawal and shipment on ATF Form 5100.11. ATF approval is not required if the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn.

(b) *Manufacturing bonded warehouse.* The proprietor of the manufacturing bonded warehouse must make an application on ATF Form 5100.11 to withdraw wine without payment of tax for transportation to and deposit in such warehouse before withdrawal of the wine.

* * * * *

§ 252.123 [Amended]

Par. 32. In § 252.123(b) remove the words ''regional director (compliance)'' and adding, in substitution the words ''appropriate ATF officer''.

§ 252.131 [Amended]

Par. 33. In the introductory text of § 252.131 remove the words ''regional director (compliance) for the region in which his premises are located'' and add, in substitution the words ''appropriate ATF officer''.

§ 252.133 [Amended]

Par. 34. Amend § 252.133 by:

a. In the second sentence removing the words ''regional director (compliance) of the region in which his premises are located'' and adding, in substitution, the words ''appropriate ATF officer''; and

b. In the last sentence removing the words ''part 240'' and adding, in substitution, the words ''part 24''.

§ 252.152 [Amended]

Par. 35. Remove from § 252.152 the punctuation and words '', Upon removal of the denatured spirits from the bonded premises, a copy of the form shall be submitted to the regional director (compliance).''

§ 252.161 [Amended]

Par. 36. Remove from the introductory text of § 252.161 the words ''regional director (compliance) for the region in which his plant is located'' and add, in substitution, the words ''appropriate ATF officer''.

§ 252.195a [Removed]

Par. 37. Remove § 252.195a.

§§ 252.198 and 252.220 [Amended]

Par. 38. Remove the words ''regional director (compliance) for the region in which the claim for drawback of tax was filed'' and add, in substitution, the words ''appropriate ATF officer'' each place they appear in the following places:

a. The introductory text of § 252.198; and

b. The introductory text of § 252.220.

§§ 252.199 and 252.220a [Amended]

Par. 39. Remove the words ''regional director (compliance) identified thereon'' and add, in substitution the words ''appropriate ATF officer'' each place they appear in the following places:

a.The last sentence of § 252.199; and

b.The last sentence of § 252.220a.

Par. 40. Revise the heading, second, and third sentences of § 252.215 to read as follows:

§ 252.215 Certificate of tax determination, Form 2605 (5120.20).

* * * The appropriate ATF officer may require other evidence of tax payment whenever such officer deems it necessary. The exporter is responsible for securing Form 2605 (5120.20), properly executed, and submitting the original of such form with the claim. * * *

Par. 41. Add the numbers and parentheses ''(5120.20)'' after the number ''2605'' each place they occur in the following places:

a. The first and last sentence of § 252.215;

b. The last sentence of § 252.331; and

c. The last sentence of § 252.333.

§§ 252.225 and 252.227 [Amended]

Par. 42. Remove the words ''regional director (compliance) of his region'' and add, in substitution the words ''appropriate ATF officer'' each place they appear in the following places:

a. The introductory text of § 252.225; and

b. The last sentence of § 252.227.

Par. 43. In § 252.247 remove the words ''regional director (compliance)'' and add, in substitution the words ''ATF officer''.

§ 252.250 [Amended]

Par. 44. Amend § 252.250 by:

a. In the introductory text by removing the words ''with the regional director (compliance) with whom the notice and claim is filed'' and adding, in substitution, the words ''appropriate ATF officer'' each place they appear; and

b. In the last sentence by removing the words ''regional director (compliance) with whom the application, notice, or notice and claim is filed'' and adding, in substitution, the words ''appropriate ATF officer''.

Par. 45. In the second sentence of § 252.262 remove the words ''regional director (compliance) of the region from which the shipment was made'' and add, in substitution, the words ''appropriate ATF officer''.

Par. 46. In the first sentence of § 252.265 remove the words ''regional director (compliance) within whose region the port of export is located'' and add, in substitution, the words ''appropriate ATF officer''.

Par. 47. In the first sentence of § 252.268 remove the words ''regional director (compliance) with whom the application, notice, or notice and claim is filed'' and add, in substitution, the words ''appropriate ATF officer''.

Par. 48. In the last sentence of § 252.286 remove the words ''to the regional regulatory administrator'' and add, in substitution, the words ''as required by the instructions on the form''.

§§ 252.303 and 252.317 [Amended]

Par. 49. Remove the words ''with the regional director (compliance),'' and add the numbers and parentheses ''(5620.8)'' after the numbers 2635 each place they occur from the following places:

a. Introductory text of § 252.303; and

b. Introductory text of § 252.317.

Par. 50. Amend § 252.334 by:

a. Revising the first sentence to read as follows:

§ 252.334 Credit allowance.

Where the credit relates to internal revenue taxes on beer that have been determined but not yet paid by the claimant, the appropriate ATF officer will notify the claimant in writing.* * *

b. In the third sentence removing the words ''part 240'' and adding, in substitution, the words ''part 24''.

Signed: February 4, 2002.

Bradley A. Buckles,

Director.

Approved: March 6, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–8869 Filed 4–12–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket # S–018]

RIN 1218–AB88

Safety Standards for Signs, Signals, and Barricades

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing a direct final rule amending construction industry standards to require that traffic control signs, signals, barricades or devices protecting construction workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1–1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD). This action is consistent with OSHA's June 16, 1999 interpretation letter stating that the agency would allow employers to comply with Revision 3 in lieu of the 1971 MUTCD. See also the companion document published in the Proposed Rules section of today's **Federal Register**.

DATES: This direct final rule will become effective August 13, 2002 unless significant adverse comments are received by June 14, 2002. If adverse comment is received, OSHA will publish a timely withdrawal of the rule in the **Federal Register.** The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 13, 2002.

ADDRESSES: You may submit three copies of written comments to OSHA Docket Office, Docket No. S–018, Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone (202–693–2350).

If written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office telephone number (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at ecomments.osha.gov. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

How to obtain copies of the MUTCD: The Federal Highway Administration partnered with three organizations to print copies of the Millennium Edition Manual of Uniform Traffic Control Devices for sale. The organizations are: (1) American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406–1022; Telephone: 1–800–231–3475; FAX: (540) 368–1722; *www.atssa.com;* (2) Institute of Transportation Engineers, 1099 14th Street, NW, Suite 300 West, Washington, DC 20005–3438; FAX: (202) 289–7722; ; *www.ite.org;* and (3) American Association of State Highway and Transportation Officials; *www.aashto.org;* Telephone: 1–800–231–3475; FAX: 1–800–525–5562.

On-line copies of the Millennium Edition are available for downloading from DOT's web site: *http://mutcd.fhwa.dot.gov/kno-millennium.* On-line copies of the 1988 Edition of the Manual on Uniform Traffic Control Devices (Revision 3, dated 9/93, with the November 1994 Errata No. 1) are available for downloading from OSHA's website: *http://www.osha.gov/doc/highway_workzones.* In addition, both documents are available for viewing and copying at each OSHA Area Office.

FOR FURTHER INFORMATION CONTACT: Nancy Ford, Office of Construction Standards and Construction Services, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION:

I. Introduction

This direct final rule applies to employers involved in road construction and repair operations. It addresses the types of signs, signals, and barricades that must be used in areas where road-work is being performed. The vast majority of road construction projects undertaken in the United States are funded through Federal transportation grants. As a condition to receiving Federal funding, the U.S. Department of Transportation's (DOT's) Federal Highway Administration requires compliance with its MUTCD.

In furtherance of OSHA's statutory mandate to protect the health and safety of employees, OSHA also requires employers that are within the scope of its authority to comply with the MUTCD. However, OSHA's standard incorporates the 1971 version of the MUTCD, which FHWA has since updated. The purpose of this direct final rule is to update OSHA's standard.

II. Direct Final Rulemaking

In direct final rulemaking, the agency publishes a final rule in the **Federal Register** with a statement that, unless a significant adverse comment is received within a specified period of time, the rule will become effective. An identical proposed rule is often published at the same time. If no significant adverse comments are submitted, the rule goes into effect. If any such comments are received, the agency will withdraw the direct final rule. The comments will then be treated as comments to the proposed rule. Direct final rulemaking is used where the agency anticipates that the rule will be noncontroversial. Examples include minor substantive changes to regulations; incorporation by reference of the latest edition of technical or industry consensus standards, and direct incorporations of mandates from new legislation.

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. A comment recommending an addition to the rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than July 15, 2002.

OSHA is also publishing a companion proposed rule, which is essentially identical to the direct final rule. In the event the direct final rule is withdrawn because of significant adverse comment, the agency can proceed with the rulemaking by addressing the comment

and again publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule; the agency will consider such comments in developing a subsequent final rule.

OSHA has determined that the subject of this rulemaking is suitable for a direct final rule on several grounds. First, in most instances, employers have already been required to comply with Revision 3 under the DOT rule. Under Title 23 of the U.S. Code, §§ 109(d) and 402(a), the Secretary of Transportation is authorized to promulgate and require compliance with uniform guidelines to reduce injuries and fatalities from road accidents. Specifically, § 109(d) authorizes DOT to require (through its approval of State highway department requirements) all highway projects in which Federal funds are involved to comply with these types of uniform rules. Highways are broadly defined under § 101(a)(11) of the DOT statute, and include roads, streets and parkways. Under § 402(a), DOT is authorized to require each State to have a highway safety program, including uniform standards for traffic safety, approved by DOT. In accordance with this authority, DOT promulgated 23 CFR Part 655, subpart F (Traffic Control Devices on Federal-Aid and Other Streets and Highways). In § 655.603(a), DOT established its MUTCD as ''the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel * * *'' Under subpart F, the States were required to adopt Revision 3 for federally funded highways within two years of its issuance. The effective date of the final rule that adopted Revision 3 was January 10, 1994 [**Federal Register**/Volume 58, Number 236/ Friday, December 10, 1993]. A two-year period for transition to full compliance with Revision 3 expired January 10, 1996. Transition to full compliance with the Millennium edition must be completed by 2003.

Consequently, employers have already been required to comply with Revision 3 for all construction work on all federal-aid highways. In addition, all States have required compliance with Revision 3 for most other roads (there is some variation among the States regarding the extent to which compliance is required on municipal, county and private roads).

Second, Revision 3 and the Millennium editions are updated versions of the 1971 ANSI standard and reflect current practice, expertise and technology in the industry. Finally, some industry stakeholders have asked OSHA to conform its rule with Revision 3 and the Millennium Edition.

III. Background

Currently, under 29 CFR 1926 Subpart G—Signs, Signals, and Barricades, OSHA requires that employers comply with the 1971 MUTCD. Specifically, employers must ensure that the following conform to the 1971 MUTCD: traffic control signs or devices used to protect construction workers (29 CFR § 1926.200(g)(2)); signaling directions by flagmen (29 CFR § 1926.201); and barricades for the protection of workers (29 CFR § 1926.202).

In contrast, a DOT rule, 23 CFR Part 655.601 through 655.603, requires that such traffic control signs or devices conform to a more recent version of the MUTCD. DOT regulations provide that the MUTCD is the national standard for all traffic control devices on streets, highways and bicycle trails. DOT ''s rule requires that traffic control devices on roads in which federal funds were involved be in substantial conformance with its MUTCD. In effect, the MUTCD has become a national benchmark for all roads.

In the early 1970s, the FHWA assumed from ANSI responsibility for publishing the MUTCD. The FHWA substantially rewrites the MUTCD every 10 to 20 years, and amends it every two to three years. Until the Millennium Edition was published in December 2000, the most recent edition was the 1988 edition. The 1988 edition consisted of 10 parts, including Part VI, ''Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.'' The FHWA substantially revised and reissued Part VI in 1993 (Revision 3). There are substantial differences both in substance and format between Revision 3 and the 1971 MUTCD. The most recent edition of the MUTCD, the Millennium Edition published in December 2000, contains some substantive changes and a new, easier to use format. States are required to adopt the Millennium Edition or its equivalent by January 2003.

Several stakeholders asked OSHA to update subpart G, because they had to meet the outdated OSHA requirements in addition to the DOT rule. They pointed out that Revision 3 and the Millennium Edition reflect updated standards and technical advances based on 22 years of experience in work zone traffic control design and implementation, as well as human behavior research and experience. The National Committee on Uniform Traffic Control Devices (''NCUTCD''), consisting of various national associations and organizations interested in highway construction or highway safety, including the American Road and Transportation Builders Association, the Association of American Railroads, the American Automobile Association, the National Association of Governor's Highway Safety Representatives, and the National Safety Council, unanimously resolved in January 1999 to request that OSHA adopt Revision 3 in place of the 1971 MUTCD. In May 2000, OSHA's Advisory Committee on Construction Occupational Safety and Health (''ACCSH'') also expressed support for adopting a more recent edition of the MUTCD as the OSHA standard for the construction industry.

OSHA reviewed the differences between the 1971 version, Revision 3 and the Millennium Edition and concluded that compliance with the more recently published manuals would provide all the safety benefits (and more) of the 1971 version. The differences between OSHA's regulations that reference the 1971 MUTCD and DOT's modern regulations create potential industry confusion and inefficiency, without in any respect advancing worker safety. Accordingly, in an interpretation letter dated June 16, 1999, to Cummins Construction Company, Inc., we stated that OSHA will accept compliance with Revision 3 in lieu of compliance with the 1971 MUTCD referenced in § 1926.200(g) through its *de minimis* policy.

The numerous and various changes to the 1971 MUTCD reflected in Revision 3 and the Millennium Edition stem from over 20 additional years of experience in temporary traffic control zone design, technological changes, and contemporary human behavior research and experience. Revision 3 and the Millennium Edition provide highway work zone planners more comprehensive guidance and greater flexibility in establishing effective temporary traffic control plans based on type of highway, traffic conditions, duration of project, physical constraints and the nature of the construction activity. Revision 3 and the Millennium Edition, accordingly, better reflect current practices and techniques to best ensure highway construction worker safety and health.

Accordingly, OSHA is amending the safety and health regulations for

construction to adopt and incorporate Revision 3 (and the option to comply with the Millennium Edition), instead of the 1971 MUTCD, and to make certain editorial changes. The amendment deletes the references in 29 CFR §§ 1926.200(g)(2) and 1926.202 to the 1971 MUTCD and inserts references to Revision 3 (and the option to comply with the Millennium Edition). The amendment clarifies and abbreviates 29 CFR § 1926.201(a), by simply adopting the requirements of Revision 3 (and the option to comply with the Millennium Edition) with regard to the use of flaggers. The amendment also makes certain editorial corrections, replacing the term workers for the term workmen and the term flaggers for the term flagmen in 29 CFR 1926.200(g)(2) and 1926.201(a).

By issuing this direct final rule, OSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers.

Updating OSHA's rule will eliminate the technical anomaly of having to meet both OSHA's outdated requirement to comply with the 1971 version and DOT's more modern requirements. Instead, OSHA's rule will require compliance with Revision 3 (or, at the option of the employer, the Millennium edition). In addition to harmonizing OSHA's requirements with those of DOT, the new rule's additional safety measures (described below) will be enforceable as OSHA requirements. With the current emphasis on rebuilding the Nation's highways and improving safety in work zone areas, OSHA's update is particularly appropriate.

IV. Discussion of Changes

Format and Style

Both the 1971 MUTCD and Revision 3 were written in narrative form with ''must/shall,'' ''should,'' and ''may'' sentences indicating mandatory requirements, guidance, and options, respectively. These verbs were often intermixed within a single paragraph, leading to some confusion. In the Millennium Edition, each subsection is organized by ''standard,'' ''guidance,'' and ''options'' categories. An additional category, titled ''support,'' is also included. This format clarifies what is expected of employers and the basis for those requirements. Pursuant to the requirements of 29 CFR 1926.31, only the mandatory language of standards that are incorporated through reference are adopted as OSHA standards. Therefore, the summary of changes below will focus primarily on the revisions that impose new requirements, or modify already existing requirements. The summary does contain short discussions on traffic control plans and tapers which, while not required by MUTCD, reflect industry practice.

The 1988 edition of the MUTCD eliminated the term ''flagmen'' and ''workmen'' and replaced them with the more inclusive ''flaggers'' and ''workers.'' The direct final rule would amend 29 CFR 1926.200(g)(2), 1926.201(a) and 1926.203 to be consistent with these changes.

In the Millennium Edition, the FHWA also changed the title of Part 6 from ''Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations'' to ''Temporary Traffic Control.'' The new title is more succinct and more accurately describes the contents of the section.

Sections 6A through 6B (Introduction and Fundamental Principles)

Revision 3 and the Millennium Edition describe an overall ''guiding philosophy'' of ''fundamental principles'' for good temporary traffic control, which is not explicitly set out in Part VI of the 1971 MUTCD. Although these principles do not formally establish new requirements, they provide a framework for understanding requirements set out in the remainder of Part VI. In the corresponding section, the 1971 ANSI standard required that all temporary traffic control devices be removed as soon as practical when they are no longer needed. Revision 3 downgraded this requirement to a recommendation. This issue was revisited during the drafting of the Millennium Edition, which once again requires the removal of signs when they are no longer needed. The Millennium Edition requires that employers remove temporary traffic control devices that are no longer appropriate, even when the work is only suspended for a short period of time.

Section 6C (Temporary Traffic Control Elements)

The 1971 MUTCD does not discuss traffic control plans (TCPs), which are used by industry to describe traffic controls that are to be implemented in moving vehicle and pedestrian traffic through a temporary traffic control zone. Revision 3 emphasizes the importance of TCPs in facilitating safe and efficient traffic flow. Revision 3 recognizes that different TCPs are suitable for different projects and does not detail specific requirements. The Millennium Edition offers expanded guidance and options for TCPs, but it adds no requirements. In both Revision 3 and the Millennium Edition, a TCP is recommended but not required. Revision 3 and the Millennium Edition also discuss the ''temporary traffic control zone,'' comprised of several areas known as the ''advance warning area,'' ''transition area,'' ''activity area,'' and ''termination area.'' In addition, Revision 3 and the Millennium Edition explain the need for differing traffic control measures in each control zone area.

The 1971 MUTCD only briefly describes ''tapers'' and provides a formula for calculating the appropriate taper length. However, Revision 3 defines and discusses five specific types of tapers used to move traffic in or out of the normal path of travel. It illustrates each of them, and sets out specific formulae for calculating their appropriate length. In all three editions, information relating to tapers is limited to guidance and contains no mandatory requirements.

All versions of the MUTCD require the coordination of traffic movement, when traffic from both directions must share a single lane. Revision 3 and the Millennium Edition describe five means of ''alternate one-way traffic control,'' adding the ''Stop or Yield Control Method'' to the methods described in the 1971 MUTCD. The ''Stop or Yield Control Method'' is appropriate for a low-volume two-lane road where one side is closed and the other side must serve both directions. It calls for a stop or yield sign to be installed on the side that is closed. The approach to the side that is not closed must be visible to the driver who must yield or stop.

Section 6D (Pedestrian and Worker Safety)

Revision 3 adds a lengthy section, not found in the 1971 MUTCD, that provides guidance and options on pedestrian and worker safety. Under Revision 3, the key elements of traffic control management that should be considered in any procedure for assuring worker safety are training, worker clothing, barriers, speed reduction, use of police, lighting, special devices, public information, and road closure. Revision 3 recommends that these traffic control techniques be applied by qualified persons exercising good engineering judgment. The Millennium Edition makes this

recommendation a requirement. The Millennium Edition also requires advance notification of sidewalk closures.

Section 6E (Hand Signaling or Flagger Control)

Revision 3 and the Millennium Edition require that a flagger wear an orange, yellow, or ''strong yellow green'' (called ''yellow-green'' in Millennium Edition) vest, shirt, or jacket, instead of an ''orange vest and/or an orange cap,'' as directed in the 1971 ANSI standard. For nighttime work, Revision 3 requires that the outer garment be retro-reflective orange, yellow, white, silver, or strong yellow-green, or a fluorescent version of one of these colors. This clothing must be designed to identify clearly the wearer as a person, and the clothing must be visible through the full range of body motions. For nighttime work, the Millennium Edition requires that the colors noted above be retro-reflective, but does not mandate that the clothing be visible through the full range of body motions. Both Revision 3 and the Millennium Edition allow the employer more flexibility in selecting colors.

Under the 1971 ANSI standard, the flagger was required to be visible to approaching traffic at a distance that would allow a motorist to respond appropriately. Revision 3 and the Millennium Edition contain more specific requirements. Under both versions, flaggers must be visible at a minimum distance of 1,000 feet. In addition, Revision 3 and the Millennium Edition list training in ''safe traffic control practices'' as a minimum flagger qualification.

Revision 3 and the Millennium Edition depart significantly from the 1971 ANSI standard by requiring that ''Stop/Slow'' paddles, not flags, be the primary hand-signaling device. The paddles must have an octagonal shape on a rigid handle, and be at least 18 inches wide with letters at least six inches high. The 1971 ANSI standard recommended a 24-inch width. Revision 3 and the Millennium Edition require that paddles be retro-reflectorized when used at night. Flags would still be allowed in emergency situations or in low-speed and/or low-volume locations. Revision 3 and the Millennium Edition differ in that Revision 3's recommendations for flag and paddle signaling practice are requirements in the Millennium Edition. In addition, the Millennium Edition applies several new requirements when flagging is used. The flagger's free arm must be held with the palm of the hand above shoulder level toward approaching traffic and the flagger must motion with the flagger's free hand for road users to proceed. These requirements were guidance in Revision 3, and options in the 1971 ANSI standard.

Section 6F (Devices)

Revision 3 and the Millennium Edition reflect numerous differences in the design and use of various traffic control devices, such as signs, signals, cones, barricades and markings, used in temporary traffic control zones. Several signs or devices are described that are not mentioned in Part VI of the 1971 ANSI standard. These signs and devices, along with their location in Revision 3 and the Millennium Edition, can be found in Table 1.

TABLE 1

New signs and devices	Revision 3	Millennium edition
Portable Changeable Message Signs	6F–2	6F.52.
Arrow Displays	6F–3	6F.53.
High-Level Warning Device or Flag Tree	6F–4	6F.54.
Temporary Raised Islands	6F–5h	6F.63.
Impact Attenuators	6F–8a	6F.76.
Portable Barriers	6F–5g and 8b	6F.75.
Temporary Traffic Signals	6F–8c	6F.74.
Rumble Strips	6F–8d	6F.78.
Screens	6F–8e	6F.79.
Opposing Traffic Lane Divider	6F–8f	6F.64.
Shoulder Drop Off	6F–1b(19)	6F.41.
Uneven Lanes	6F–1b(20)	6F.42.
No Center Stripe	6F–1b(21)	6F.43.
Be Prepared to Stop	VI–8c sign W20–7b	6F.15, W3–1a.
Detour Marker and End Detour	6F–1c(4)	6F.15.
Various Other Warning Signs	V1–8a, signs W1–4bR, W1–4cR, W1–8, W3–3, W4–1 and W4–3 and V1–8b, signs W5–2a and W8–3a.	

The dimensions, shape, legends or use of various signs have changed. Those changes are reflected in Table 2.

TABLE 2

New signs	Revision 3	Millennium edition
Turn Off 2-Way Radios and Cellular Telephones.	6F–1b(18a) and (18b)	6F.15, W22–2.
Stop Ahead and Yield Ahead	VI–8a, signs W3–1a and W3–2a	6F.15, W3–1a & W3–2a.
Road Narrows and Narrow Bridge	VI–8a, signs W5–1 and W5–2	6F.15, W5–1 & W5–2.
Right Lane Ends	VI–8c, sign W9–1	6F.15, W9–1.
Length of Work	6F–1c(2)	6F.15, G20–1.
End Road Work	6F–1c(3)	6F.15, G20–2a.

Also, Revision 3 and the Millennium Edition offer expanded options for the color of temporary traffic control signs. Signs that under the 1971 ANSI standard were required to have orange backgrounds may now have fluorescent red-orange or flourescent yellow-orange backgrounds.

The 1971 ANSI standard required that signs in rural areas be posted at least five feet above the pavement; signs in urban areas were required to be at least seven feet above the pavement. Revision 3 eliminated the distinction between urban and rural areas, and downgraded the requirement to a recommendation. It recommended that signs in all areas have a minimum height of seven feet. In the Millennium Edition, the FHWA returned to the 1971 ANSI requirements. The Millennium Edition also introduced the requirement that signs and sign supports be crashworthy.

The Millennium Edition introduced and clarified mandatory requirements for the design of the following signs: Weight Limit, Detour, Road (Street) Closed, One Lane Road, Lane(s) Closed, Shoulder Work, Utility Work, signs for blasting areas, Shoulder Drop-Off, Road Work next XX KM (Miles), and Portable Changeable Message.

The dimensions, color or use of certain channelizing devices have also changed. ''Channelizing devices'' include cones, tubular markers, vertical panels, drums, barricades, temporary raised islands and barriers. The 1971 ANSI standard required that traffic cones and tubular markers be at least 18 inches in height and that the cones be predominantly orange. Revision 3 raised the minimum height for traffic cones and tubular markers to 28'' ''when they are used on freeways and other high speed highways, on all highways during nighttime, or whenever more conspicuous guidance is needed.'' (6F–5b(1), 5c(1)) Revision 3 also expanded the color options for cones to include fluorescent red-orange and fluorescent yellow-orange. The Millennium Edition maintained these requirements.

Revision 3 and the Millennium Edition require that vertical panels be 8 to 12 inches wide, rather than the 6 to 8 inches required by the 1971 ANSI standard. Under Revision 3 and the Millennium Edition, drums must be made of lightweight, flexible and deformable materials, at least 36 inches in height, and at least 18 inches in width. Steel drums may not be used. The Millennium Edition adds the requirement that each drum have a minimum of two orange and two white stripes with the top stripe being orange. Revision 3 and the Millennium Edition require that delineators only be used in combination with other devices, be white or yellow, depending on which side of the road they are on, and be mounted approximately four feet above the near roadway edge.

The 1971 ANSI standard required warning lights to be mounted at least 36 inches high. Revision 3 and the Millennium Edition reduced the minimum height to 30 inches and introduced new requirements for warning lights. Type A low intensity flashing warning lights and Type C steady-burn warning lights must be maintained so as to allow a nighttime visibility of 3000 feet. Type B high intensity flashing warning lights must be visible on a sunny day from a distance of 1000 feet.

Revision 3 and the Millennium Edition contain an additional requirement, not found in the 1971 ANSI standard, that requires employers to remove channelizing devices that are damaged and have lost a significant amount of their retro-reflectivity and effectiveness. Revision 3 and the Millennium Edition also specifically prohibit placing ballast on the tops of drums or using heavy objects such as rocks or chunks of concrete as barricade ballast.

Revision 3 and the Millennium Edition address in greater detail the appearance and use of pavement markings and devices used to delineate vehicle and pedestrian paths. They require that after completion of the project, pavement markings be properly obliterated to ensure complete removal and a minimum of pavement scars. Whereas Revision 3 requires that all temporary broken-line pavement markings be at least four feet long, the Millennium Edition sets the minimum at two feet.

Section 6G (Temporary Traffic Control Zone Activities)

This section, not found in the 1971 ANSI standard, provides information on selecting the appropriate applications and modifications for a temporary traffic control zone. The selection depends on three primary factors: Work duration, work location, and highway type. Section 6G in both Revision 3 and the Millennium Edition emphasizes that the specific typical applications described do not include a layout for every conceivable work situation and that typical applications should, when necessary, be tailored to the conditions of a particular temporary traffic control zone.

Among the specific new requirements in Revision 3 and the Millennium Edition are the following: retro-reflective and/or illuminated devices in long term (more than three days) stationary temporary traffic control zones; warning devices on (or accompanying) mobile operations that move at speeds greater than 20 mph; warning sign in advance of certain closed paved shoulders; a transition area containing a merging taper in advance of a lane closure on a multi-lane road; temporary traffic control devices accompanying traffic barriers that are placed immediately adjacent to the traveled way; and temporary traffic barriers or channelizing devices separating opposing traffic on a two-way roadway that is normally divided.

The Millennium Edition includes several additional requirements in Section 6G. It requires the use of retro-reflective and/or illuminated devices in intermediate-term stationary temporary traffic control zones. A zone is considered intermediate-term if it is occupying a location more than one daylight period up to three days, or if there is nighttime work in the zone lasting more than one hour. The Millennium Edition also requires a transition area containing a merging taper when one lane is closed on a multi-lane road. When only the left lane on undivided roads is closed, the merging taper must use channelizing devices and the temporary traffic barrier must be placed beyond the transition area channelizing devices along the centerline and the adjacent lane. In addition, when a directional roadway is closed, inapplicable WRONG WAY signs and markings, and other existing traffic control devices at intersections within the temporary two-lane two-way operations section, must be covered, removed, or obliterated.

Revision 3 Section 6H (Application of Devices)

Revision 3 and the Millennium Edition provide an extensive series of diagrams illustrating ''typical applications'' of the temporary traffic control requirements. These illustrations are intended as practical guides on how to apply all the factors discussed in other chapters and displayed on Figures and Tables throughout Part VI.

Regulatory Planning and Review

Executive Order 12866 (Regulatory Planning and Review)

Relationship to Existing DOT Regulations

Through this rule, OSHA is requiring that traffic control signs, signals, barricades or devices conform to Revision 3 or Part VI of the Millennium Edition, instead of the ANSI MUTCD. The ANSI MUTCD was issued in 1971. In 1988 the FHWA substantially revised and reissued the MUTCD. Since that time, FHWA has published several updates, including a 1993 revision to Part VI—Revision 3. In December 2000, FHWA published a Millennium Edition of the MUTCD that changed the format

and revised several requirements. Employers that receive Federal highway funds are currently required to comply with Revision 3 and have up until January 2003 to bring their programs into compliance with the Millennium Edition.

This is a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866. OSHA has determined that this action is not an economically significant regulatory action within the meaning of Executive Order 12866. Revision 3 of the MUTCD adds to the ANSI requirements some new, alternative traffic control devices and expanded provisions and guidance materials, including new typical application diagrams that incorporate technology advances in traffic control device application. Part VI of the Millennium Edition includes some alternative traffic control devices and only a very limited number of new or changed requirements. However, the activities required by compliance with either Revision 3 or the Millennium Edition would not be new or a departure from current practices for the vast majority of work sites. All of these requirements are now or have been part of DOT regulations that cover work-related activities on many public roadways.

According to DOT regulations, the MUTCD is the national standard for streets, highways and bicycle trails. While OSHA's de minimus policy is applied to situations in which there is failure to comply with the 1971 ANSI MUTCD when there is compliance with Revision 3, this action will reduce any confusion created by the current requirement for employers to comply both with the 1971 ANSI MUTCD and DOT's MUTCD.

Percentage of Roads Covered Under OSHA's Standard Versus the DOT Standard

The majority of U.S. roads are currently covered by DOT regulations and their related State MUTCDs. DOT regulations cover all federal-aid highways, which carry the majority of traffic. Morever, many states extend MUTCD coverage to non-federal-aid and private roads. Thus, the requirements imposed by this OSHA direct final rule will be new only for the small percentage of the work that is not directly regulated by DOT or state transportation agencies.

Federal-Aid Highways

Employers must comply with the MUTCD for all construction work on all federal-aid highways. Although federal-aid highways constitute a minority of all public highways as measured by length, these highways carry the great majority of traffic. According to OSHA's analysis, 84 percent of vehicle-miles are driven on federal-aid highways (see Table 1). Though not a perfect measure, vehicular use corresponds more directly than length of road to the need for construction, repair, and other work activities addressed by the MUTCD. This suggests that most construction and repair activities occur on federal-aid highways. Conforming to the standards of the MUTCD during these work activities is a clear requirement of receiving federal highway funds and is therefore regulated by DOT.

State, Local, County and Municipal Roads (Not Receiving Federal Aid)

The available data suggest that most non-federal-aid roads are required to comply with the MUTCD. Many states choose to regulate public roadways that are not federal-aid highways and thereby extend the coverage of the MUTCD. For example, OSHA reviewed the practices of nine states (Alabama, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Michigan, North Carolina, and Texas), which include 23 percent of all U.S. public roads. In conducting this review, OSHA found that eight of the states require MUTCD standards on all state roads, while the ninth state requires MUTCD standards on state roads if the state contracts the work to be done. Five of these states also require that MUTCD standards be met on all county and municipal roads. For the sample of nine states, individual state coverage of public roads by state MUTCDs ranges from 12 percent to 100 percent (see Table 2). OSHA found that, on average, MUTCD coverage of all public roads in these nine states is 84 percent. (OSHA computed the average across the nine states by weighting by total highway miles.)

Private Roads

OSHA also examined MUTCD coverage of private roads. Although data on the extent of private roads is very limited, the best available information indicates that about 20 percent of the total mileage is accounted for by private roads (see Table 2). Some of these private roads are covered by State MUTCD standards. Of the nine states examined by OSHA, one state included private roads under the MUTCD standards if the state enforced traffic laws on these roads (e.g., roads in gated communities). Another state extended MUTCD standards to private roads if the state was involved in road design or approval. A third state deferred coverage to municipal ordinances, which may require meeting MUTCD standards on private roads. Thus, although it is clear that some local governments extend coverage to private roads, no data are available to specify with precision the extent to which this is the case.

Additional Incentives To Comply With the MUTCD

The estimates of the percentage of roads and highways covered by the MUTCD presented above are conservative. States, localities and their contractors have additional incentives to comply with the MUTCD when it is not required. OSHA policy reinforces these incentives because OSHA does not enforce compliance with the ANSI MUTCD when there is compliance with Revision 3.

Under 23 USC § 402(a), states must have highway safety programs that are approved by the Secretary of Transportation. The Secretary is directed to promulgate guidelines for establishing these programs. Those guidelines state, inter alia, that programs ''should'' conform with the MUTCD. DOT does not have the authority to require compliance with the MUTCD on roads that do not receive federal aid, but recommends it. In light of this, and the statement that the MUTCD is ''the national standard for all traffic control devices'' (23 CFR § 655.603(a)), the MUTCD has become the standard of care for litigation purposes. Thus, when a state or local government engages in a road construction project, it should be exercising the reasonable standard of care (i.e. compliance with a recent edition of the MUTCD). If it is not, it could face substantial liability if the construction on its roads is a contributing factor in an accident. While compliance with the MUTCD does not insulate a state or locality from liability, it significantly reduces its exposure.

Moreover, many of the contractors who conduct work on covered roads are likely to conduct work on non-covered roads. In the interest of efficiency, thesecontractors are likely to consistently apply the current version of the MUTCD to all work, rather than switch back to the ANSI version for a small percentage of their overall business.

Finally, as is discussed below, signs and devices meeting 1993 specifications are often less expensive than signs meeting 1971 ANSI specifications. This has provided contractors involved in road construction and repair operations with a natural incentive to replace old

and worn signs with signs meeting the more up-to-date standard.

Costs Associated With the DOT Standard

DOT has consistently found that their revisions to the MUTCD as a whole and to its various parts have not given rise to new annual costs of compliance that are significant within the meaning of that term as used in Executive Order 12866. The **Federal Register** Notice (December 10, 1993) on the final amendment to the Manual on Uniform Traffic Control Devices (MUTCD); Work Zone Traffic Control states:

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. As previously discussed in the above sections on ''Changed Standards'' and ''New Devices,'' this revision of Part VI adds some new, alternative traffic control devices, and only a very limited number of new or changed requirements. Most of the changes included in this version of part VI are expanded guidance materials, including many new Typical Application Diagrams. The FHWA expects that application uniformity will improve at virtually no additional expense to public agencies or the motoring public. Therefore, based on this analysis a full regulatory evaluation is not required.

The **Federal Register** Notice (December 18, 2000) on the final amendment to the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) states:

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. Most of the changes in this final rule provide additional guidance, clarification, and optional applications for traffic control devices. The FWHA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and the safety of roadways at little additional expense to public agencies or the monitoring public. Therefore, a full regulatory evaluation is not required.

Moreover, OSHA has conducted detailed comparisons of the various versions of the MUTCD. The OSHA comparative analysis indicates that the majority of changes to the 1971 version offered increased flexibility, were advisory in nature, or changed mandatory requirements to non-mandatory provisions. Table 3 summarizes the differences between the 1971 ANSI MUTCD and the 1993 Revision that either potentially increase costs or lead to increased flexibility. In cases of increased flexibility and changes to non-mandatory provisions, it is likely that the effect will be to decrease the costs of compliance.

In a few instances, however, the 1993 Revision mandated sign or device changes that could lead to cost increases because contractors would need to purchase new signs for some projects. Table 4 summarizes these cases, which include specifications for stop/slow paddles, no parking signs, ''road narrows'' and other warnings, and reflective traffic drums. The table lists the changes in specifications as well as presents prices for the 1971 versus the 1993 version of the sign or device. Excluded from Table 4 are ''approach warning signs,'' which are additional signs required by the 1993 MUTCD in highly vulnerable areas.

For stop/slow paddles, the more recent MUTCD version of sign (18″ by 18″) is less expensive than the older, ANSI version (24″ by 24″), with vendors reporting a price difference of $31.50 per sign. No parking signs that include the international ''no parking'' symbol (as required in the 1993 MUTCD) but do not include a legend are only $0.80 more than the older ANSI version of the signs containing only a legend (the 1993 MUTCD does not require a legend). For ''road narrows'' and other warning signs, the MUTCD version (36″ by 36″) is $31 more than the ANSI-specification in the most direct comparison that OSHA identified ($90, as compared to $59). One vendor, however, sold a version of the new sign using an alternative metal for less than $47. Regarding reflective traffic drums, one vendor reported that reflective 55-gallon metal drums (1971 ANSI standard) are no longer produced. When they were last available they sold for $45 to $60 each. A reflective traffic drum meeting the MUTCD standard is $68.

To summarize, prices for signs meeting 1993 MUTCD specifications are not significantly higher than prices for signs meeting 1971 ANSI specifications; in fact, the prices are often lower. Moreover, for devices such as reflective traffic drums, it is not even possible to replace old and worn items with items meeting 1971 standards. This suggests that contractors involved in road construction and repair operations have had an incentive to update to 1993 specifications as their equipment has worn out. The primary effect of the OSHA standard, will be to speed the process of switching to 1993 specifications for contractors who have not already chosen to switch.

To further gauge the potential burden of updating to 1993 MUTCD specifications, OSHA examined the forty-four colored illustrations of the different types of typical highway construction workzones presented in Sections 6G through 6H of the 1993 MUTCD. The majority of examples of workzones presented in the MUTCD represent situations that are currently covered by DOT regulations, and would not be affected by the OSHA standard. However, OSHA was able to identify three examples of situations that may not fall under DOT regulations, but would be included in the scope of the OSHA standard.

The first example examined was a ''Lane closure on minor street,'' illustrated by Figure TA–18 (see page 142–3 of the MUTCD). In this example, compliance with the 1993 MUTCD would require no changes. Requirements would be met using signs and devices meeting the 1971 ANSI specifications. Consequently, no incremental costs would be attributable to compliance with the 1993 MUTCD.

The second example examined was a ''Lane closure for one lane-two way traffic control,'' illustrated by Figure TA–10 (see page 126–7 of the MUTCD). In this setting, compliance with the 1993 MUTCD is achieved by adding two flagger signs and four advance warning signs (two ''Right [Left] Lane Closed Ahead'' and two ''Road Construction XXX Ft'') to the 1971 ANSI requirement. In addition, two flagger hand signaling devices (sign paddles) meeting the 1993 dimensions (24″ by 24″) are needed. A Flagger sign can be purchased for about $34, while the ''Right [Left] Lane Closed Ahead'' and ''Road Construction XXX Ft'' signs can be purchased for about $47 each. The two sign paddles are $67. [1] Thus, compliance with the 1993 MUTCD would involved a one-time expenditure of $323.

Finally, OSHA examined a third situation, ''Lane closure on low-volume two-lane road, illustrated by Figure TA–11 (see page 128–9 of the MUTCD). It is important to note that this situation would likely apply to a county or state road, and most states already extend the coverage of the MUTCD in this setting (see OSHA review of 9 states presented below). Here, compliance with the 1993 MUTCD is achieved through the use of two ''Right [Left] Lane Closed Ahead'' and two ''Road Construction XXX Ft'')

[1] Prices are from Newman Signs (http://www.newmansigns.com/)

to the 1971 ANSI requirement, which can be purchased for about $47 each.[2] In addition, one advance warning sign with the international symbol for ''yield'' is needed. These can be purchased for roughly $100.[3] Thus, compliance with the 1993 MUTCD would involved a one-time expenditure of $288. If it is assumed that contractor chooses to use 20 drums instead of 20 cones, this would involve an one-time additional expenditure of $1,360, increasing compliance costs to $1,648.

In sum, DOT has consistently found that changes and revisions to the MUTCD do not lead to significant compliance costs. OSHA's comparative assessment of the 1971 ANSI requirements and the 1993 MUTCD tends to support DOT's findings. Because the OSHA regulation applies the MUTCD as developed by DOT, the costs of compliance with the OSHA regulation will be insignificant as well.

Costs Attributable to the OSHA Standard

The analysis discussed above indicates that the costs of compliance for OSHA's proposed action will not be significant under Executive Order 12866. As DOT has estimated, the costs associated with the various versions of the MUTCD and its revisions are small. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD supports DOT's estimates. In addition, the overwhelming majority of public roads are already covered by DOT regulations and their related State MUTCDs. As discussed above, OSHA estimated that more than 80 percent of work performed on U.S. roads is covered DOT regulations and their related State MUTCDs. Due to the extension of MUTCD requirements to non-federal-aid and private roads as well as additional incentives to comply with the MUTCD in situations where compliance is not mandatory, the percentage of work already covered is likely to be much higher than 80 percent. The costs of compliance for those directly regulated by OSHA will, therefore, be substantially lower than those estimated for compliance with DOT regulations.

The differences between OSHA's current regulations that reference the ANSI MUTCD and DOT's regulations create potential industry confusion and inefficiency. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD indicated that the majority of changes offered increased flexibility, were advisory in nature, or changed mandatory requirements to non-mandatory provisions. Since the costs of the proposed action are so minimal, it is possible that they will be completely offset by eliminating the inefficiency associated with inconsistent OSHA and DOT regulations as well the direct cost savings from enhanced flexibility and changes to non-mandatory provisions embodied in the 1993 MUTCD.

Technological and Economic Feasibility

The MUTCD is a standard that has been routinely updated for decades by DOT and in fact predates the federal highway program. The process used to update this standard is for DOT to work with state highway officials, who provide federal officials with information on the evolving nature of traffic control devices and industry practices. The federal role consists primarily of compiling this evolving set of practices and devices into a national manual—the MUTCD—that includes standards, guidance, and options. As noted by a DOT official,[4] the MUTCD essentially codifies current industry practice. Thus, most potentially affected parties—local governments, highway and utility contractors, and others—already apply the MUTCD, which clearly demonstrates that doing so is both technologically and economically feasible.

Regulatory Flexibility Screening Analysis

In order to determine whether a regulatory flexibility analysis is required under the Regulatory Flexibility Act, OSHA has evaluated the potential economic impacts of this action on small entities. Table 5 presents the data used in this analysis to determine whether this regulation would have a significant impact on a substantial number of small entities. For purposes of this analysis, OSHA used the Small Business Administration (SBA) Small Business Size Standard and defined a small firm as a firm with $27.5 million or less in annual receipts.

OSHA guidelines for determining the need for regulatory flexibility analysis require determining the regulatory costs as a percentage of the revenues and profits of small entities. The analysis presented here is in most respects a worst case analysis. OSHA examined the situation of a small firm with less than 20 employees all of whose employees work on projects not previously covered by Revision 3 or the Millenium Edition. OSHA further assumed that the firm previously complied only with the existing OSHA rule (1971 ANSI MUTCD). OSHA derived estimates of the profits and revenues per firm for establishments with fewer than 20 employees for ''Highway and Street Construction'' (SIC 1611) using data from Census and Dun and Bradstreet. Compliance costs were estimated using the third situation examined under Costs Associated with the DOT Standard (''Lane closure on low-volume two-lane road'') and assuming the worst-case scenario, where compliance costs were $1,648. This value served as OSHA's estimate for upper-bound compliance costs per construction crew. OSHA assumed that a highway construction crew consists of four employees and computed an estimate of average total cost of the regulation per establishment of $2,161. Annualized compliance costs were $308 per establishments for small entities, amounting to 0.03 percent of revenue and 0.85 percent of profit. Based on this worst-case evaluation, OSHA certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

TABLE 1.—FEDERAL AID HIGHWAY LENGTH, LANE-MILES AND VEHICLE-MILES

System	Length of roadway (Miles) [1]	Lane-Miles [2]	Annual Vehicle-Miles [3]
Interstate Highways	46,564	208,649	648,124
Other National Highways	113,995	333,355	546,028
Total National Highways	160,559	542,004	1,194,152
Other Federal-Aid	797,783	1,719,703	1,093,975

[2] Prices are from Newman Signs (http://www.newmansigns.com/)

[3] Prices are from Newman Signs (http://www.newmansigns.com/)

[4] Personal communication between Rudolph Umbs, Federal Highway Administration, and John Duberg, TechLaw, December 12, 2000.

TABLE 1.—FEDERAL AID HIGHWAY LENGTH, LANE-MILES AND VEHICLE-MILES—Continued

System	Length of roadway (Miles) [1]	Lane-Miles [2]	Annual Vehicle-Miles [3]
Total Federal-Aid Highways	958,342	2,261,707	2,288,127
Non Federal-Highways	2,973,673	5,947,348	420,201
Total Highways	3,932,015	8,209,055	2,708,328
Federal-Aid as a Percent of Total	24%	28%	84%

[1] FHWA, Highway Statistics: 1999, Section V, Table HM–16
[2] FHWA, Highway Statistics: 1999, Section V, Table HM–48
[3] FHWA, Highway Statistics: 1999, Section V, Table VM–3

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Table 2: Highway Miles Covered by Federal or State MUTCDs: Selected States

State	Federal Agency 1/	State Agency	County	Town, Township, Municipal	Other 2/	Total Miles Covered	Total Miles	Covered Miles as a Share of Total
Alabama 3/	733	10,869				11,602	94,246	12%
Arkansas 4/	2,135	16,366	65,347	13,710	1	97,559	97,559	100%
Colorado 4/	6,969	9,071	55,447	12,363	1,299	85,149	85,149	100%
Connecticut 4/	4	3,717		16,807	260	20,788	20,788	100%
Delaware 5/	7	5,065				5,072	5,748	88%
Kentucky 6/	1,013	27,477				28,490	74,120	38%
Michigan 4/	2,083	9,725	89,344	20,570		121,722	121,722	100%
North Carolina 7/	2,361	78,103				80,464	99,301	81%
Texas 4/	454	79,164	142,285	78,488	116	300,507	300,507	100%
9 State Total	15,759	239,557	352,423	141,938	1,676	751,353	899,140	84%
U.S. Total	118,391	773,904	1,766,396	1,206,925	66,401		3,932,017	
9 States as a % of U.S. Total	13%	31%	20%	12%	3%		23%	

Source: FHWA, Highway Statistics: 1999, Section V, Table HM-10

1/ Roadways in Federal parks, forests, and reservations that are not part of the State and local highway systems. 2/ Includes State park, State toll, other State agency, other local agency, and other roadways not identified by ownership. 3/ County, other local public, and private roads are covered if the state was part of design work or road approval. 4/ All state, county, and municipal roads are covered. 5/ Municipal and private roads are not covered. 6/ All state, county, and municipal roads are covered if the state contracts the work. 7/ NC has no county road; municipalities "should" use the MUTCD. 8/ States for which OSHA reviewed MUTCD requirements.

Table 3: Changes in 1993 MUTCD (vs. 1971 ANSI) that Lead to Potential Cost Decreases or Increases

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of Change (s)
6E-3 Flagmen The use of an orange vest, and/or an orange cap shall be required for flagmen. For nighttime . . . garments shall be reflectorized.	6E-3: High Visibility Clothing: 1. For daytime work, the flagger's vest, shirt, or jacket shall be orange, yellow, strong yellow green or flourescent versions of these colors. For nighttime work, . . . the garments shall be retroreflective: 1. Orange, yellow, white, silver, strong yellow-green, or a fluorescent version of one of these. 2. Shall be visible at a minimum distance of 1,000 feet. 3. Shall be designed to identify clearly the wearer as a person and be visible through the full range of body motions.	Mandatory provisions offer more flexibility-wider range of acceptable garments and colors. Clarification of visibility distance requirements. Millennium Edition no longer requires visibility through full range of body motions.
6E-2. Hand-Signaling Devices: Sign paddles should be at least 24 inches wide . . .	6E-4. Hand-Signaling Devices: The standard STOP/SLOW sign paddle shall be 18 inches square.	Sign change.
6E-5. Flagger Stations: . . . distance is related to approach speed and physical conditions at the site; however, 200 to 3000 feet is desirable.	6E-6. Flagger Stations: Table VI-1, Guidelines for length of longitudinal buffer space, may be used for locating flagger stations in advance of the work space. (Pg. 13: lengths start at 35 feet for 20MPH speed to 485 feet for 65 MPH))	Guidance provisions that offer more flexibility.

Table 3 (continued)

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of Change (s)
	Footnote to the guidelines in Table VI indicate that distances apply on wet and level pavements. Employers will have to purchase the AASHTO (1990) document (A Policy on Geometric Design of Highways and Streets, AASHTO) for recommended adjustments for the effect of grade on stopping and variation for trucks. Also, 6E-6 references the same AASHTO document (1990), Table III-2 for "distance may be increased for downgrades." The reference to the 1990 document is outdated. Employers may purchase AASHTO: A Policy on Geometric Design of Highways and Streets, 2001.Member Price: $80 or Non Member Price: $102	Contractors that perform work on steep downgrades most likely have referenced the document under projects covered by DOT regulations. OSHA should be able to include this information in the Federal Register or on the web.
Figure 6-12 depicts 14 commonly used regulatory signs. R4-7: international symbol with additional plaque that reads Keep Right (24"X18").	Figure VI-7a and VI-7b includes the 14 commonly used regulatory signs depicted in 1971 ANSI plus 7 additional signs: R3-1 (24"X24") International symbol: no right turn R3-2 " " " " no left turn R3-5 (30"X36") left curve only R3-6 (30"X36") International symbol: left lane bear left R3-7 (30"X30") Left lane must turn left R3-8 (30"X30") Multi-turn left lanes <u>Two of the 14 signs depicted in ANSI 1971 were modified</u>: R4-7: additional plaque (24"X18") is no longer required.	The additional signs allow greater flexibility.
R8-3 (24"X30") "No Parking" sign.	R8-3 (24"X24") Letter sign was revised to reflect the international symbol for no parking.	Sign change.

Table 3 (continued)

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of Change (s)
6B-8 Road (Street) Closed Sign The Road (Street) Closed sign shall be used where the roadway is closed to all traffic except contractors' equipment . . . and shall be accompanied by appropriate detour signing.	6-F.1.a(4): The "shall" provisions for Road (Street) Closed signs, etc., have been changed to "should."	Changed to non-mandatory
6B-10 Weight Limit Signs Weight restrictions must be consistent with State or local regulations . . .	6-F.1a.(6): Weight restrictions **should** be consistent with State or local regulations One weight limit sign (R12-5 (30"x36") was added for optional use.	Changed to non-mandatory
"Flagman 500 Ft" sign.	Sign changed to international symbol for flagger (48"x48")-this sign may be used in conjunction with other warning signs.	Changed to non-mandatory
"Road Work 1 Mile" sign.	This sign is omitted.	
"Road Narrows" W5-1: 30"x30"	Dimensions changed to 36"x36"	Sign change.
"Narrow Bridge" W5-2: 30"x30"	Dimensions changed to 36"x36"	Sign change.
"Right Lane Ends" W9-1: 30"x30"	Dimensions changed to 36"x36"	Sign change.
International symbol signs require descriptive plaques: (1) W6-1 with plaque: Divided Highway (24"x18") (2) W6-2 with plaque: Divided Highway Ends (24"x18") (3) W12-2 with plaque: Low Clearance (24"x18") (4) W8-5 with plaque: Slippery When Wet (24"x18")	International symbol signs no longer require descriptive plaques:	Greater flexibility. Reduction in requirements.

Table 3 (continued)

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of Change (s)
	6-F.1 b.(4): Other approach warning signs. Certain conditions require other advance warning signs, such as limited sight distance or because an obstruction may require a motorist to stop. There are no specified standards for such signs. The determination of the sign or signs to be used shall be based on an engineering study using the following sections as guidelines. As an alternative to a specific distance on these advance warning signs, the word AHEAD may be used. Blasting Zone Ahead: W22-1: Previously, "Blasting Zone 1000 ft" Turn off Two-way Radios and Cellular Telephones: W22-2: "and Cellular Telephones" was added.	Greater flexibility.

	New signs available for selection: Shoulder Drop Off: W8-9a Uneven Lanes: W8-11 No Center Strip: W8-12 Lane curves: W1-4bR; W1-4cR Bear right: W1-8 Signal ahead: W3-3 Right lane traffic merging: W4-1; W4-3 Lane narrows: W5-2a International symbol for "pavement ends": W8-3a Truck crossing: W8-6 Loose gravel: W8-7 Rough Road: W8-7 Shoulder Drop off: W8-9a Be Prepared to Stop: W20-7b	Greater flexibility.
	6F-2. Portable Changeable Message Signs (PCMS). . . . used most frequently on high-density, urban freeways, . . . or where highway alignment, traffic routing problems or other conditions require advance warning and information.	PCMS is most frequently on high-density, urban freeways. These situations are most likely to be covered by DOT regulations, and thus, not affected by the OSHA standard.

Table 3 (continued)

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of Change (s)
	6F-3. Arrow Displays. . . . intended to provide additional warning and directional information to assist in merging and controlling traffic through or around a temporary traffic control zone. Type A: appropriate for use on low-speed urban streets. Type B: for intermediate-speed facilities and for maintenance or mobile operations on high-speed roadways. Type C: used on high-speed, high volume traffic control projects. Arrow display panels shall be mounted on a vehicle, a trailer, or other suitable support. Arrow display shall not be used on a two-lane, two-way roadway for temporary one-lane operation. An arrow display shall not be used on a multilane roadway to laterally shift all lanes of traffic, because unnecessary lane changing may result.	The Arrow Displays is an optional means (non-mandatory) for employers to supplement other traffic control devices. It is popular because it can be highly mobile (mounted on a vehicle, trailer, etc.) and easily repositioned as the job progresses.

	6F-4. High-level warning device (flag tree). . . . most commonly used in urban high-density traffic situations to warn motorists of short-term operations. . . . may supplement other traffic control devices in temporary traffic control zones. . . . shall consist of: -minimum of two flags with or without a Type B, high intensity, flashing warning light. -distance from the road way to the bottom of the lens of the light and to the lowest point of the flay material shall be no less than 8 feet. -flags shall be 16 inches square or larger and shall be orange or fluorescent versions of orange in color.	The high level warning device, also referred to as the flag tree, is another option (non-mandatory) for employers to use in addition to other traffic control devices.

Table 3 (continued)

1971 ANSI MUTCD	1993 Rev 3, Part VI MUTCD	Nature of Change (s)
6C-3 Cone Design. These shall be a minimum of 18 inches in height.	6F-5 Channelizing Devices. 6F-5b Cones. . . . shall be a minimum of 18 inches-except when used on freeways and other high-speed highways they shall be 28 inches in height. Retroreflection of 28-inch or larger cones shall be provided by a white band 6 inches wide, no more than 3 to 4 inches from the top of the cone, and an additional 4-inch wide white band a minimum of 2 inches below the 6-inch band.	Projects on freeways and high-speed highways are likely to fall under DOT regulations, and thus, are unaffected by the OSHA standard.
6C-5 Vertical Panel Design. . . . shall consist of at least one panel 6 to 8 inches in width . . .	6F-5d Vertical Panels. . . . shall be 8 to 12 inches wide . . . Vertical panels used on expressways, freeways, and other high-speed roadways shall have a minimum of 270 square inches of retro reflective area facing traffic.	Projects on expressways, freeways and high-speed highways are likely to fall under DOT regulations, and thus, are unaffected by the OSHA standard.

6C-4 Drum Design. Drums are normally metal drums, of 30 to 55 gallon capacity . . .	6F-5e Drums. Drums . . . shall be constructed of lightweight, flexible, and deformable materials and be a minimum of 36 inches in height; and have at least an 18 inch minimum width, regardless or orientation. Steel drums shall not be used.	Device change.
	6F-8 Other devices. New section added to reflect current technology. 1. 6F-8a. Impact Attenuators. 2. 6F-8b. Portable Barriers 3. 6F-8c. Temporary Traffic Signals. 4. 6F-8d. Rumble Strips. 5. 6F-8e. Screens. 6. 6F-8f. Opposing Traffic Lane Divider.	Offers greater flexibility. Impact Attenuators, portable barriers, etc. are new devices added to reflect common practices among highway construction and repair contractors.

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TABLE 4.—PRICES FOR TRAFFIC WARNING SIGNS AND DEVICES CHANGED BY THE 1993 MUTCD REQUIREMENTS

Sign/Device	Summary of change	Source	Price	Applicable standard
'Stop/Slow' Sign Paddle	1971 ANSI width requirements were (at least) 24 inches; Changed to 18 inches square in 1993 MUTCD.	Pac Sign Co. (G–hs–12)	$65.00	1971 ANSI
		John M. Warren, Inc. (TC1006)	33.50	1993 MUTCD
'No Parking Any Time'	Changed to reflect International symbol for No Parking.	John M. Warren, Inc. (TS1011)	12.95	1971 ANSI
No Parking: international symbol, without written legend.		Newman Signs (R7–31A)	12.05	1993 MUTCD
		Newman Signs (R8–3A)	8.47	1993 MUTCD
'No Parking' with international symbol below legend.		Pac Sign Co. (G–r–101be5)	16.00	1993 MUTCD
		Pac Sign Co. (G–r–101ra5)	22.00	1993 MUTCD
'Narrow Bridge; 'Right Lane Ends'; ''Road Narrows'.	Dimensions changed from 30X30 in 1971 to 36X36 in 1993.	Pac Sign Co. (G–w5–2ara22; G–w9–1ra22; G–w5–1ra22).	59.00	1971 ANSI
'Right Lane Closed Ahead'		Pac Sign Co. (G–w20–5rra27)	90.00	1993 MUTCD
		Newman Signs (W20–5R–A)	46.63	1993 MUTCD
Reflective Traffic Drum	1971 ANSI requirement: Metal drums of 30–55 gallon capacity.	1971 ANSI version no longer produced; Northeast Traffic Control Company.	[1] 45 to 60	1971 ANSI
	1993 MUTCD requirement: Constructed of lightweight, flexible, and deformable materials,'' 36 inch height minimum, 18 inch width minimum.	Bent Manufacturing Superdome Drum.	68.00	1993 MUTCD

Notes:
[1] When last available; estimate by sales representative.
Price data were obtained from the following Web sites:
John M. Warren, Inc., Mobile, AL
http://www.johnmwarren.com/item.asp?cat=1&ThisPage=0&maxPage=0&prodID=140
http://parkingsignsbypac.safeshopper.com/501/cat501.htm
http://www.johnmwarren.com/item.asp?cat=2&ThisPage=2&maxPage=2&prodID=290
Newman Signs
http://www.newmansigns.com/
Pac Sign Co., Binghamton, NY
http://parkingsignsbypac.safeshopper.com/226/cat226.htm?239
http://parkingsignsbypac.safeshopper.com/544/cat544.htm?239
http://parkingsignsbypac.safeshopper.com/542/cat542.htm?239
http://parkingsignsbypac.safeshopper.com/383/cat383.htm?239
Bent Manufacturing, Huntington Beach, CA
http://www.bentmfg.com/drums.htm

TABLE 5.—DATA AND CALCULATIONS FOR REGULATORY FLEXIBILITY ANALYSIS

Data Type/Calculation	Amount/Result
Receipts (1,000) [1]	$9,807,978
Median return on sales [2] (in percent)	3.00
Estimated profit for 1997	$294,239,340
Total employment [1]	42,501
Number of establishments [1]	8,104
Employment per establishment (Total employment divided by number of establishments)	5.24
Receipts per establishment (Receipts divided by number of establishments)	$1,210,264
Profit per establishment (Profit divided by number of establishments)	$36,308
Number of crews per establishment (Employment per establishment divided by 4, assuming 4-person crew)	1.31
Worst-case one-time cost per crew (from economic analysis)	$1,648
Total one-time cost per establishment (Worst-case one-time cost per crew multiplied by number of crews per establishment)	$2,161
Annualization factor (10 year life, 7% interest) [3]	0.14
Annualized cost per establishment (Total one-time cost per establishment multiplied by annualization factor)	$308
Cost as a percentage of receipts per establishment (Annualized cost per establishment divided by receipts per establishment)	0.03
Cost as a percentage of profit per establishment (Annualized cost per establishment divided by profit per establishment)	0.85

[1] Data from the U.S. Bureau of Census, ''Number of Firms, Number of Establishments, Employment, Annual Payroll, and Receipts by Employment Size of the Enterprise for the United States, All Industries—1997,'' (http://www.census.gov/csd/susb/susb2.htm#go97) for SIC 1611, Highway and Street Construction (Enterprises with less than 20 employees).
[2] Data from Dun and Bradstreet, ''Industry Norms & Key Business Ratios, 1998–1999,'' for SIC 1611, Highway and Street Construction.
[3] Annualization factor (Af) computed using the formula on page 18111:
where i is the interest rate and n is the useful life of the equipment.

$$Af = \frac{i(1+i)^n}{(1+i)^n + 1}$$

Unfunded Mandates

This direct final rule, which amends Subpart G—Signs, Signals, and Barricades (29 CFR 1926.200(g)(2), 201(a), 202 and 203) has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. §§ 1501 *et seq.*). For the purposes of the UMRA, the Agency certifies that this direct final rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

Federalism

OSHA has reviewed this direct final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health (OSH) Act (29 U.S.C. §§ 651 *et seq.*) expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. 29 U.S.C. § 667. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce their own requirements for road-construction safety.

Although Congress has expressed a clear intent for OSHA standards to preempt State job safety and health rules in areas involving the safety and health of road-construction workers, this direct final rule nevertheless limits State policy options to a minimal extent. DOT requires compliance with the MUTCD for ''application on any highway project in which Federal highway funds participate and on projects in federally administered areas where a Federal department or agency controls the highway or supervises the traffic operations.'' 23 CFR § 655.603(a). For this work, which represents the majority of construction work in every State, all States (including State-plan States) must require compliance with the current edition of the MUTCD or another manual that substantially conforms to the current edition. States have been required to enforce Revision 3 or their own substantially conforming manual since 1994. DOT regulations allow States until January 2003 to adopt the Millennium Edition, or another manual that substantially conforms to the Millennium Edition. See 23 CFR 655.603(b). In addition, States must have highway safety programs that are approved by the Secretary of Transportation, even for roads that do not receive Federal aid. The Secretary is directed to promulgate guidelines for establishing these programs. 23 U.S.C. § 402(a). Those guidelines state, inter alia, that programs should conform with the current edition of the MUTCD. Accordingly, most States require compliance with the latest edition of the MUTCD even on roads that receive no Federal funding. The requirements described in this document are new requirements only for the very small percentage of employers that are not already covered by the DOT regulations or corresponding State requirements. Therefore, OSHA is only limiting State policy options to the extent that it requires State-plan States to apply the provisions of Revision 3 or the Millennium Edition to that extremely small percentage of employers. (See economic analysis) OSHA concludes that this action does not significantly limit State policy options.

State Plan Standards

The 26 States or territories with OSHA-approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective to employees within six months of the publication date of this final standard. These are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (for State and local government employees only), New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

Paperwork Reduction Act

This action does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–30.

Public Participation

Interested persons are requested to submit written data, views, and arguments concerning this direct final rule. These comments must be received by June 14, 2002 and submitted in quadruplicate to Docket No. S–018, Docket Office, Room N2625, Occupational Safety and Health Administration, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Alternatively, one paper copy and one disk (3 ½ inch floppy in WordPerfect 6.0 or 8.0 or in ASCII) may be sent to that address, or one copy faxed to (202) 693–1648 and three paper copies mailed to the Docket Office mailing address; or one copy e-mailed to ecomments.osha.gov and one paper copy mailed to the Docket Office mailing address.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

OSHA requests comments on all issues related to changing the references in the safety and health regulations for construction from the 1971 MUTCD to Revision 3 (and, at the option of the employer, the Millennium Edition). OSHA also welcomes comments on the Agency's findings that there are not negative economic, environmental or other regulatory impacts of this action on the regulated community. OSHA is not requesting comment on any issues or opening the record for any issue other than those related to this amendment to 29 CFR §§ 1926.200, 201, 1926.202 and 203.

If OSHA receives no significant adverse comments on this amendment, OSHA will publish a **Federal Register** document confirming the effective date of this direct final rule. Such confirmation may include minor stylistic or technical changes to the amendment that appear to be justified. For the purpose of legal review, OSHA views the date of confirmation of the effective date of this amendment as the date of issuance.

If OSHA receives significant adverse comment on this amendment, it will withdraw the amendment and proceed with the proposed rule addressing the change of reference from the 1971 MUTCD to Revision 3 and the

Millennium Edition published in the Proposed Rules section of today's **Federal Register**.

List of Subjects in 29 CFR Part 1926

Incorporation by reference, MUTCD, Occupational Safety and Health, Traffic control devices.

Authority and Signature

This document was prepared under the direction of John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 653, 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. § 553), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, Secretary of Labor's Order No. 3–2000 (65 F.R. 50017), and 29 CFR Part 1911.

Signed at Washington, D.C., this 3rd day of April, 2002.

John Henshaw,

Assistant Secretary of Labor.

Part 1926 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below:

PART 1926—[AMENDED]

1. The authority citation for Subpart G of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U. S. C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U. S. C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017) as applicable, 29 CFR Part 1911.

Subpart G—[Amended]

2. Paragraph (g)(2) of § 1926.200 is revised to read as follows:

§ 1926.200 Accident prevention signs and tags

* * * * *

(g) * * *

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the Manual of Uniform Traffic Control Devices (''MUTCD''), 1988 Edition, Revision 3, September 3, 1993, FHWA–SA–94–027 or Part VI of the Manual on Uniform Traffic Control Devices, Millennium Edition, December 2000, FHWA, which are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the Millennium Edition from the following organizations: American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406–1022; Telephone: 1–800–231–3475; FAX: (540) 368–1722; *www.atssa.com;* Institute of Transportation Engineers, 1099 14th Street, NW, Suite 300 West, Washington, DC 20005–3438; FAX: (202) 289–7722; *www.ite.org;* and American Association of State Highway and Transportation Officials; *www.aashto.org;* Telephone: 1–800–231–3475; FAX: 1–800–525–5562. Electronic copies of the MUTCD 2000 are available for downloading at *http://mutcd.fhwa.dot.gov/kno-millennium.* Electronic copies of the 1988 Edition MUTCD, Revision 3, are available for downloading at *http://www.osha.gov/doc/highway—workzones.* Both documents are available for inspection at the OSHA Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

* * * * *

3. Paragraph (a) of § 1926.201 is revised to read as follows:

§ 1926.201 Signaling.

(a) Flaggers. Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers shall conform to Part VI of the Manual on Uniform Traffic Control Devices, (1988 Edition, Revision 3 or the Millennium Edition), which are incorporated by reference in §1926.200(g)(2).

* * * * *

4. Section 1926.202 is revised to read as follows:

§ 1926.202 Barricades

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3 or Millennium Edition), which are incorporated by reference in §1926.200(g)(2).

5. Paragraph (c) of § 1926.203 is revised to read as follows:

§ 1926.203 Definitions applicable to this subpart.

* * * * *

(c) *Signals* are moving signs, provided by workers, such as flaggers, or by devices, such as flashing lights, to warn of possible or existing hazards.

* * * * *

[FR Doc. 02–8773 Filed 4–12–02; 8:45 am]

BILLING CODE 4510–26–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2002. Interest assumptions are also published on the PBGC's Web site (http://www.pbgc.gov).

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2002, (2)

adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2002, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.90 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent an increase (from those in effect for April 2002) of 0.40 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for April 2002) of 0.50 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 103, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
103	5–1–02	6–1–02	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 103, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
103	5–1–02	6–1–02	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occuring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
May 2002	.0590	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 9th day of April 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–9064 Filed 4–12–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA60

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Bonus Payments in Medically Underserved Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to physicians in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the TRICARE program, and as described in instructions issued by the Executive Director, TRICARE Management Activity. This rule promotes a reimbursement enhancement to a limited number of physicians designed to increase TRICARE beneficiary access to care.

EFFECTIVE DATE: This rule is effective August 2, 2000.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Medical benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION:

I. Final Rule Provisions

A. Overview

This final rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to physicians in medically underserved areas. This action is undertaken under authority of Title 10, United States Code Chapter 55, section 1079, Paragraph (h)(1). For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program, as described below. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the TRICARE program, and as described in instructions issued by the Executive Director, TRICARE Management Activity. Bonus payments under Medicare are described below. If the Department of Health and Human Services acts to amend or remove the provision for bonus payments under Medicare, TRICARE likewise may follow Medicare in amendment or removing provision for such payments. Additionally, it provides a reimbursement enhancement that favors physicians in underserved areas, thus alleviating healthcare access problems experienced by beneficiaries residing in such areas. Finally, because Medicare previously established a bonus payment reimbursement mechanism in these areas, our emulation of this well established mechanism complies with existing statutory mandates that TRICARE follow Medicare reimbursement policy wherever practicable. This rule will not unilaterally increase payments to all physicians, but just those residing in these underserved areas. To do otherwise would prevent TRICARE Management Activity from fulfilling its duty to beneficiaries in these underserved areas.

B. Medicare Underserved Areas

For Medicare, ''medically underserved areas'' are those HPSAs (Health Professional Shortage Areas) designated by the Bureau of Primary Health Care (BPHC) within the Health Resources and Services Administration (HRSA). HRSA defines the areas through a set of criteria and publishes lists which have names of the areas (sometimes by county, sometimes by census tract, or other descriptive definitions). The HPSAs are areas considered to have a shortage of primary care physicians, but Medicare pays the bonus payment for all physician services in these geographic areas. Medicare carriers are responsible for determining the boundaries of the HPSAs and qualifying physicians within these areas. Areas are to have a shortage of primary care health physicians; many are rural but that is not a criterion for inclusion; poor inter-city geographic areas are often included.

C. Medicare Bonus Payments

The Medicare program pays physicians that provide services in medically underserved areas a bonus payment equal to ten percent of their Medicare payments, and the Medicare carriers calculate and pay these bonus payments quarterly by summing the amount of government payment from claims with a special modifier (QB or QU) which indicates that the service was provided in such an area (i.e., this is not an increase in the allowed amount nor does it produce a special fee schedule for this type of servicer, it is simply a bonus payment). The Medicare bonus payment is based on § 1833(b) of the Social Security Act.

II. Public Comments

A 60-day comment period was provided on the interim final rule. Comments were received from only two parties. Both the American Psychiatric Association and the Veterans Health Administration comments concerned the process that would be used to implement the bonus payment reimbursement system. The process that shall be used will pay physicians that provide services in health professional shortage areas the same additional payment that Medicare would pay in these areas. TRICARE contractors that administer and pay for physician services will inform physicians of the process that will be followed in order to receive the bonus payment from TRICARE. There was some confusion that occurred between the bonus

payment provision and the proposed rule that was published in the **Federal Register** on May 20, 2000. The two publications are separate and distinct.

Regulatory Procedure

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

The changes set forth in the final rule are minor revisions to the existing regulation. The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.14 is amended by revising paragraph (h)(2) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(h) * * *

(2) *Bonus payments in medically underserved areas.* A bonus payment, in addition to the amount normally paid under the allowable charge methodology, may be made to physicians in medically underserved areas. For purposes of this paragraph, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the TRICARE program, and as described in instructions issued by the Executive Director, TRICARE Management Activity. If the Department of Health and Human Services acts to amend or remove the provision for bonus payments under Medicare, TRICARE likewise may follow Medicare in amending or removing provision for such payments.

* * * * *

Dated: April 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–8586 Filed 4–12–02; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL207–1a; FRL–7159–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving new emissions tests averaging provisions for the state of Illinois. The Illinois Environmental Protection Agency (IEPA) submitted the provisions on October 9, 2001 as a requested revision to the Illinois State Implementation Plan (SIP). The new provisions provide that when conducting a compliance test, a source is considered in compliance with the relevant standard if the average of 3 emissions test runs is at or below the level specified in the emissions standard.

DATES: This rule is effective on June 14, 2002, unless EPA receives relevant adverse written comments by May 15, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

Table of Contents

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IV. EPA rulemaking action.
V. Administrative requirements.

I. What Is the EPA Approving?

EPA is approving new emissions tests averaging provisions for the state of Illinois. The new provisions provide that when conducting a compliance test, a source is considered in compliance with the relevant standard if the average of 3 emissions test runs is at or below the level specified in the emissions standard.

a. What Sources May or May Not Use the Emissions Tests Averaging Provisions?

The emissions tests averaging provisions only apply to continuous steady-state units, cyclic steady-state units, or other units that during normal operating conditions produce a consistent pattern of emissions.

Also, the emissions tests averaging provisions may not be used for determining the compliance status of emissions units that are subject to Sections 111 (Standards of Performance for New Stationary Sources) and 112 (Hazardous Air Pollutants) of the Clean Air Act or for units that are being tested for emissions generated by hazardous waste or municipal waste.

b. What Are the Criteria for Emissions Tests Averaging?

For emissions tests averaging to be used, the provisions require at least 3 valid test runs to be conducted. However, compliance may be determined with only 2 valid test runs ''in the event that a sample is accidentally lost or conditions occur in which one of the test runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme

meteorological conditions, malfunction or other dissimilar or not-representative circumstances.'' If more than 3 valid test runs are conducted, compliance will be determined by averaging all valid test runs.

If the criteria for emissions tests averaging are not met, then each valid test run must meet the applicable limitation.

c. Test Plans

Under the following circumstances, if the owner or operator of an emission unit intends to average emissions tests results for that unit, a test plan must be submitted to the IEPA before testing takes place.

(1) The IEPA makes a written request for a test plan;

(2) A non-standard test method or procedure is to be used;

(3) A source seeks to test at operating parameters that differ from the maximum parameters specified in its operating permit;

(4) A source seeks to deviate from a prior test plan for that emission unit; or,

(5) A test plan for the emission unit is required to be submitted by an Illinois Pollution Control Board order, any court order, consent decree, compliance commitment agreement, or permit provision.

Test plans must specify the purpose of the test, the operating parameters, the test methods, and any other procedures that will be followed when conducting an emissions test.

If the source plans to utilize a test plan previously submitted to the IEPA, a new test plan is not required. The source must submit a notice containing the purpose of the test, the date the previously submitted test plan was submitted, and a statement that the source is relying on a previously submitted test plan.

If a source intends to use a standard test method or procedure, no test plan is required. However, the source must submit a notice containing the purpose of the test, and the standard test method or procedure to be used.

The IEPA is not required to review and approve or disapprove test plans prior to the emissions tests.

d. Changes to Test Plans

Certain types of minor changes to test plans which do not effect the stringency of the limit may be made at the time of testing as long as documentation of the change is submitted with the test results. However, if the changes are not approved in advance, the test results may be disapproved if it is found that a valid test run was not obtained as a result of the change.

II. Analysis of the Requested SIP Revision

Because the averaging provisions apply only to steady-state emissions sources which, by definition, exhibit little variability in emissions, approval of these provisions will not result in an increase in allowed emissions over current rules.

Therefore, EPA is approving this rule.

III. What Are the Environmental Effects of This Action?

As discussed above, the emissions tests averaging provisions apply only to steady-state emissions sources which, by definition, exhibit little variability in emissions. Therefore, approval of these provisions will not result in increased emissions, and will not have an adverse effect on air quality.

IV. EPA Rulemaking Action.

We are approving, through direct final rulemaking, new emissions tests averaging provisions for the state of Illinois. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by May 15, 2002. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on June 14, 2002.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Recordkeeping and reporting requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 7, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(164) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(164) On October 9, 2001, the Illinois Environmental Protection Agency submitted new emissions tests averaging provisions for the state of Illinois. The new provisions provide that when conducting a compliance test, a source is considered in compliance with the relevant standard if the average of 3 emissions test runs is at or below the level specified in the emissions standard. The emissions tests averaging provisions only apply to units that produce a consistent pattern of emissions. The provisions may not be used for determining the compliance status of emissions units that are subject to Sections 111 (Standards of Performance for New Stationary Sources) and 112 (Hazardous Air Pollutants) of the Clean Air Act or for units that are being tested for emissions generated by hazardous waste or municipal waste. Also submitted on October 9, 2001 was a non-substantive correction in section 283.120 Applicability which corrected typographic errors in citing testing requirements contained in Section 111 and Section 112 of the Federal Clean Air Act.

(i) Incorporation by reference.

(A) Emissions tests averaging provisions for Illinois contained in Illinois Administrative Code Title 35: Environmental Regulations for the State of Illinois, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 283: General Procedures For Emissions Tests Averaging. Adopted at 24 Ill. Reg. 14428. Effective September 11, 2000.

(B) Correction to Section 283.120 of the Emissions tests averaging provisions for Illinois contained in Illinois Administrative Code Title 35: Environmental Regulations for the State of Illinois, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 283: General Procedures For Emissions Tests Averaging. Expedited Correction Adopted at 24 Ill. Reg. 9657. Effective September 11, 2000.

[FR Doc. 02–8948 Filed 4–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–2077–01; I.D. 032502A]

RIN 0648–AP85

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications; Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule to establish final 2002 groundfish fishery specifications for Pacific whiting; announcement of overfished status of Pacific whiting.

SUMMARY: This emergency rule establishes the 2002 fishery specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to establish allowable harvest levels of whiting based on the best available scientific information. Table 1a and Section IV (B)(3) (the whiting specifications) of the annual specifications and management measures for the Pacific coast groundfish fishery, which was published in the **Federal Register** on March 7, 2002, are being revised by this emergency rule.

With this **Federal Register** document NMFS announces that the whiting resource is considered overfished.

DATES: Effective April 15, 2002 until October 15, 2002. Comments must be received no later than 5 p.m., local time on May 15, 2002.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Comments also may be sent via fax to 206–526–6736. Comments will not be accepted if submitted via e-mail or internet. Copies of the environmental assessment (EA)/Regulatory Impact Review may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201, or by contacting Don McIsaac at 503–326–6352, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140; or Svein Fougner (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: This rule is accessible via the Internet at the Office of the Federal Register's Website at *http://www.access.gpo.gov/su--docs/aces/aces140.htm.* Background information and documents are

available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*and at the Council's website at *http://www.pcouncil.org.*

Background

The FMP requires the Council to develop management specifications for groundfish species or species groups that it proposes to manage, each calendar year. These specifications include ABCs and, harvest levels (OY, harvest guidelines, or quotas).

A proposed rule to establish the 2002 Pacific Coast groundfish fishery specifications and management measures was published in the **Federal Register** on January 11, 2002 (67 FR 1555), followed by a final rulemaking on March 7, 2002 (67 FR 10490).

NMFS and the Council realized that the whiting biomass had decreased throughout the 1990s. In anticipation of a new whiting stock assessment that would be available in early 2002 and given the small amount of whiting typically landed under trip limits prior to the April 1 start of the primary season, the Council chose to delay its final whiting recommendation until its March 2002 meeting. Therefore, the whiting harvest specifications from 2001 were carried over into 2002 and remain in place until new specifications are established through a Federal rulemaking.

The new assessment, which incorporated the 2001 hydroacoustic survey data, was complete and made available for examination by the Council's groundfish stock assessment review team (STAR) for whiting in late February. As a result of the new whiting stock assessment, it has been determined that the spawning stock biomass has substantially declined and has been lower during the past several years than previously estimated. The stock assessment estimated that the biomass in 2001 was 0.7 million mt, and that the female spawning biomass was less than 20 percent of the unfished biomass. This is substantially lower than the 1998 assessment which estimated the biomass to be at 39 percent of its unfished biomass. The overfished threshold under the FMP is 25 percent of the unfished biomass; therefore, the whiting stock was overfished in 2001. The stock is estimated to be near 25 percent of the unfused biomass in 2002. In retrospect, revised biomass estimates based on the results of the new assessment indicate that the exploitation rates in 1999 (28 percent), 2000 (24 percent) and 2001 (31 percent), were above the overfishing level.

Although a large amount of juvenile fish, spawned in 1999, are expected to mature and enter the fishery in the near future, the spawning biomass is not expected to increase above the maximum sustainable yield (MSY) biomass level of B40% for several years. Any increases in biomass will depend on the vigor of juvenile fish that mature and enter the fishery as well as the exploitation rates.

With the publication of this document, NMFS is designating whiting as overfished. Because the whiting stock has been judged to be below its overfished/rebuilding threshold (B25%), the Council is required to develop a rebuilding plan to return the stock to greater than 40 percent of its unfished biomass (B40%-the MSY biomass level).

At its March 2002 meeting in Sacramento, CA, the Council reviewed the results of the new stock assessment. The Council was presented with a range of coastwide harvest levels based on three alternative harvest rates and three different assumptions about the amount (recruitment level) of juvenile fish that are expected to become part of the exploitable biomass in 2002. The three recruitment assumptions included a low recruitment of 2.11 billion fish (10 percent probability), a medium recruitment of 2.89 billion fish (80 percent probability), and a high recruitment of 3.87 billion fish (10 percent probability). At the time of the 2001 survey, the fish spawned in 1999 had only partially recruited to the fishery and were not well estimated by the model resulting in uncertainty about the effect these young fish would have on the exploitable stock biomass. As fish that spawned in 1999 mature, the whiting stock is expected to increase in size under each of the three recruitment assumptions. At the low recruitment level the biomass is projected to increase to between 25 percent and 28 percent of its unfished condition by 2003, for the range of 2002 harvest levels examined. At the high recruitment level, the biomass is projected to increase to between 38 percent and 42 percent of its unfished level by 2003, using the same range of 2002 harvest amounts.

These three recruitment level assumptions represent different degrees of risk in characterizing the amount of juvenile fish entering the fishery. A low recruitment assumption is most precautionary and represents a risk-averse approach, the medium recruitment is risk neutral, and the high recruitment assumption carries greater risk for a timely stock recovery. The Council's Scientific and Statistical Committee (SSC) chose to forward all three recruitment assumptions to the Council, while noting that the medium recruitment assumption was the risk neutral characterization of the incoming recruits to the fishery.

In addition to the three recruitment assumptions, the SSC forwarded three harvest rates to the Council; these rates were based on the proxies of F40%, F45% and F50% (See the 2001 annual specification and management measures (66 FR 2338, January 11, 2001) for a description of harvest policies). Because the harvest rate is dependent on the stock productivity, different harvest rates can mean very different things for individual stocks. For a fast-growing stock, one that has a strong ability to maintain a moderate level of recruitment even when the spawning biomass is reduced, a higher fishing mortality rate, such as F40%, may be used. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing) and is therefore a more aggressive harvest strategy than F45% or F50%.

The OYs presented to the Council were reduced by the 40/10 default harvest policy (See the 2000 annual specification and management measures (65 FR 221, January 4, 2000) for a full description of the 40/10 default harvest policy) because the stock biomass was estimated to be below B40%. When a stock is below B40%, the 40/10 policy is applied as a precautionary measure and is effectively a default rebuilding policy. The further a stock is below the B40% threshold, the greater the reduction in the OY, until at B10% the OY would be set at zero. This default rebuilding policy is intended to reduce the fishing pressure or mortality so that a stock b iomass below B40% will increase more rapidly than with a constant exploitation rate.

Following discussion and public testimony, the Council recommended adopting a U.S.-Canada coastwide OY of 190,500 mt with a U.S. OY of 152,400 mt (80 percent of the coastwide OY - the proportion caught in U.S. waters) the associated ABC was not available, but would be based on a harvest rate of F40% and assuming a medium-high recruitment scenario. NMFS is disapproving the Council's recommendation to adopt an ABC based on F40% with a medium-high recruitment scenario and will instead implement an ABC based on F40% with a medium recruitment scenario, which the Council's SSC characterized as a risk-neutral approach. The U.S.-Canada coastwide ABC will be set at 208,000 mt

with a U.S. ABC of 166,000 mt. NMFS also is disapproving the Council recommended OY of 152,400 mt and will instead implement a U.S.-Canada coastwide OY of 162,000 mt and a U.S. OY of 129,600 mt. The OY is the ABC adjusted by the 40/10 harvest policy as a precautionary measure.

NMFS believes that the risk neutral medium recruitment scenario, instead of one that accepts greater risk, is supported by the best available science given the current biomass estimate and the uncertainty associated with the estimates of recent year class strength. The 2002 retrospective analysis of recruitment estimates from the 1998 assessment resulted in recent recruitment strengths and biomass estimates being revised downward. This suggests that future stock assessments also have a reasonable expectation of revising the estimated strength of the 1999 year class to a lower value. It should be noted that the two most recent year classes prior to the 1998 assessment (at an age equivalent to the 1999 year class in the new assessment) were estimated to be about 40 percent lower in the 2002 assessment than in the 1998 assessment. Relative to the medium-high recruitment chosen by the Council, the 2002 stock assessment results suggest that a lower 1999 recruitment is two to three times more likely than a higher 1999 recruitment. The STAR Panel recognized the high variance associated with forecasting recruitment and suggested caution in using the projections for forecasting future biomass levels. The Council's choice to use a 1999 year class estimate midway between the medium and high estimates is inconsistent with the STAR Panel recommendation.

The F40% harvest proxy will remain in place for 2002. The Council's STAR panel recommended moving to a more conservative level of F45%. The SSC did not make the same recommendation, but noted that the STAR panel recommendation was a risk-adverse policy and not risk-neutral advice. The SSC identified the F40% rate as reflecting a risk-neutral policy. While the F45% is by definition more conservative than the F40%, neither the STAR nor the SSC were presented with an analysis to evaluate the suitability of the F45% harvest rate proxy. Such an analysis was beyond the scope of the assessment. An evaluation of the harvest rate proxies for whiting should be completed before setting the 2003 harvest level.

The Council-recommended harvest level represents a 15.0-–percent exploitation rate which based on what NMFS finds to be the best available science, is intermediate between the coastwide ABC of 208,000 mt (the overfishing level) which represents a 16.4-percent exploitation level, and the default OY of 162,000 mt with the 40/10 adjustment, which represents a 12.8 percent exploitation level. Given the overfished status of whiting, NMFS believes the precautionary measures built into the 40/10 rule are necessary while a rebuilding plan is being developed.

Projections indicate that if mean levels of recruitment occurred annually, an F40% harvest policy adjusted by the 40/10 rule, would rebuild the spawning stock to B40% within 7 to 9 years (2009–2011). However, it must be noted that given the highly skewed nature of the historical recruitment distribution, there is less than a 50 percent likelihood that annual recruitments would average the long-term mean during this short period.

Economic Impacts

The U.S. OY recommended by the Council (152,400 mt) represents a 20–percent reduction from the 2001 whiting OY, while the OY which NMFS is adopting (129,600 mt) represents a 32 percent reduction from the 2001 whiting OY. In 2001, the ex-vessel value of whiting taken by all sectors was estimated to be approximately $13,415,000. Under the OY being adopted by NMFS (129,600 mt), the ex-vessel value of whiting is expected to be approximately $10,000,000; this is 25 percent less than the ex-vessel value in 2001. Reduced revenues from production will likely affect the ability of operations to not only cover their variable costs, but also their fixed costs. If it is not economically feasible for some shoreside or at-sea processors to participate in the fishery, the financial impacts of the reduction may be distributed disproportionately among recent participants. In the short term, the reduced OY is expected to have a major economic impact on harvesters and processors; however, NMFS believes the reductions are necessary for the long-term health of the whiting fishery.

Concerns about the impacts on other groundfish fisheries were considered. Participants in the shore-based whiting fleet have accounted for roughly 50 percent of the annual harvest of species in the Dover sole, thornyhead, and sablefish (DTS) species complex, as well as at least 20 percent of the non-Dover sole flatfish species. Many whiting vessels target flatfish and DTS species after the whiting season. It is expected that the length of the whiting season would be reduced proportionately with the OY. Therefore, a drastically reduced OY would likely result in a shorter whiting season and increased fishing pressure on already constrained non-whiting fisheries, resulting in higher than expected landings, inseason reductions in trip limits, and possibly early closures.

Sector Allocations

Each year, the whiting OY is allocated between the specific sectors of the fishery. The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.324, allow for the allocation of fish to the tribes through the annual specification and management process.

Beginning in 1999, NMFS has set the tribal allocation according to an abundance-based sliding scale allocation method proposed by the Makah Tribe in 1998. See 64 FR 27928, (May 29, 1999); 65 FR 221, 247 (January 4, 2000); 66 FR 2338, 2370 (January 11, 2001). Under the sliding scale allocation method, the tribal allocation varies in relation to the level of the U.S. whiting OY, ranging from a low of 14 percent (or less) of the U.S. OY at OY levels above 250,000 mt, to a high of 17.5 percent of the U.S. OY at an OY level at or below 145,000 mt. For 2002, the Makah Tribe has requested, and the Council has recommended, a tribal allocation of 22,680 mt, using the sliding scale allocation method. No other tribes have requested allocations for 2002.

The sliding scale allocation method is the subject of two recent court decisions. In the treaty fishing rights case of *U.S.* v. *Washington*, Case No. C70–9213, Phase I, Sub-proceeding No. 96-2 (W.D. Wash., April 5, 2001), the Court considered several scientific affidavits submitted by NMFS and the Makah Tribe, and found that ≥the allocation agreed on by the Secretary is a lawful exercise of his obligation to comply with the treaties guaranteeing Indian tribes their aboriginal right to take fish at their usual and accustomed fishing grounds.≥ 143 F. Supp. 2d 1218, at 1224. The Court concluded: ''The sliding scale allocation method advocated by the Secretary and Makah shall govern the United States aspect of the Pacific whiting fishery until the Secretary finds just cause for alteration or abandonment of the plan, the parties agree to a permissible alternative, or further order issues from this court.'' Id.

In *Midwater Trawlers Cooperative* v. *U.S. Department of Commerce*, 282 F. 3d. 710, 2002 WL 338406 (9th Cir. 2002), the Ninth Circuit Court of Appeals upheld the tribal treaty right to Pacific whiting, upheld the usual and accustomed fishing area of the Makah Tribe, and found that the Makah Tribe

is entitled, pursuant to the Treaty of Neah Bay, ''to one-half the harvestable surplus of Pacific whiting that passes through its usual and accustomed fishing grounds, or that much of the harvestable surplus as is necessary for tribal subsistence, whichever is less.'' However, the Court also found that the specific allocation in 1999 to the Makah Tribe was inconsistent with the scientific principles set forth in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (which requires that NMFS base fishery conservation and management measures on the best scientific information available), because NMFS did not adequately support the 1999 allocation set forth in the 1999 **Federal Register** document. Accordingly, the Court issued instructions to the District Court to remand to the agency for more specific findings. On remand, NMFS will be required ''to either promulgate a new allocation consistent with the law and based on the best available science, or to provide further justification for the current allocation that conforms to the requirements of the Magnuson-Stevens Act and the Treaty of Neah Bay.''

The *Midwater Trawlers* decision was just issued, and the case has not yet been formally remanded to the agency by the District Court. However, prior to the formal remand, NMFS must announce the 2002 Pacific whiting allocations. NMFS has reviewed the best available scientific information, including the information contained in documents in the administrative record in the *Midwater Trawlers* case, and has also reviewed scientific information submitted by NMFS and the Makah Tribe in *U.S.* v. *Washington*, Sub-proceeding 96–2. NMFS has no additional information that alters the existing information on the distribution and migration pattern of the stock. Therefore, NMFS is relying on the existing information as the best scientific information available.

Based on the information referenced above, NMFS concludes that an allocation of 22,680 mt of Pacific whiting to the Makah Tribe in 2002 is within the tribal treaty right as described by the District Court in *U.S.* v. *Washington*, Sub-proceeding 96–2, and by the Ninth Circuit in the *Midwater Trawlers* decision. Since this is the amount requested by the Tribe, NMFS also concludes that it is sufficient to meet tribal subsistence needs for 2002, even though it may be less than the full treaty entitlement. NMFS will address these issues in more detail in its formal response to the Ninth Circuit decision.

The non-tribal commercial OY for whiting is 106,920 mt (the 129,600 mt OY minus the 22,680 mt tribal allocation). Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process but do not harvest whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (36,353 mt), motherships getting 24 percent (25,661 mt), and the shore-based sector getting 42 percent (44,906 mt).

All whiting caught in 2002 before the effective date of this action will be counted toward the new harvest guideline. During the primary season, discards of whiting are estimated inseason from observer data and counted toward the OY. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

U.S.-Canada

The 2002 allocation of the whiting resources between the U.S. and Canada is not yet resolved. The stock assessment was a collaborative effort between the two nations. However, the results of the new stock assessment were not available in time to hold formal negotiations with Canada before the March Council meeting. Consequently, the Council assumed continuation of the 80 percent share that the U.S. has set harvest levels at in recent years. NMFS believes that the F40 harvest rate with a medium recruitment assumption and a 40/10 harvest policy approach shows adequate precaution. The Council recommended that the future whiting negotiations between the U.S. and Canada be scheduled.

NMFS Actions

For the reasons stated here, NMFS is amending the 2002 annual specifications and management measures (67 FR 10490, March 7, 2002) with the following changes:

(1) Revise Table 1a. 2002 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

BILLING CODE 3510–22–S

Table 1a. 2002 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total catch)	Allocations (Total catch)			
Species	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	745					745	577	251	203	81.0	48	19.0
Pacific Cod	3,200		c/			3,200	na	3,200	--	--	--	--
Pacific Whiting d/	166,000					166,000	129,600	106,920	--	--	--	--
Sablefish e/ (north of 36°)	4,644				--	4,644	4,367	3,906	3,539	90.6	367	9.4
Sablefish f/ (south of 36°)	--				333	333	229	229	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,368	--	--	--	--
English sole	2,000		1,100			3,100	na	–	–	–	–	–
Petrale sole h/	1,262		500	800	200	2,762	na	–	–	–	–	–
Arrowtooth flounder	5,800					5,800	na	–	–	–	–	–
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	–	–	–	–	–

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total catch)	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	640			--		640	350	350	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,727					3,727	856	853	827	97.0	26	3.0
Canary m/	228					228	93	44	39	87.7	5	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			122		122	100	44	25	55.7	19	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	3,146			c/		3,146	3,146	3,131	2,871	91.7	260	8.3
Shortspine thornyhead r/	1,004					1,004	955	948	945	99.73	3	0.27
Longspine thornyhead s/ (north of 36°)	2,461				--	2,461	2,461	2,455	--	--	--	--
Longspine thornyhead t/ (south of 36°)	--				390	390	195	195	--	--	--	--
Cowcod u/	c/			19	--	19	2.4	0	--	--	--	--
	c/			--	5	5	2.4	0	--	--	--	--
Yelloweye w/	22			5	--	27	13.5	3.69	--	--	--	--
Darkblotched v/	187					187	168	168	163	--	5	–

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch)	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish North x/	4,795			--		4,795	3,115	2,442	2,239	91.7	203	8.3
Minor Rockfish South y/	--			3,506		3,506	2,015	1,283	714	55.7	569	44.3
Remaining Rockfish	2,727			854		--	--	--	--	--	--	--
bank z/	c/			350		350	--	--	--	--	--	--
black aa/	615		500			1,115	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--
bocaccio - (north)	318					318	--	--	--	--	--	--
chilipepper- (north)	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99						
yellowtail- (south)				116		116						
Other rockfish cc/	2,068			2,652		--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	na	–	–	–	–	–

Table 1b. 2002 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total catch)			Harvest Guidelines (Total catch)			
		Total Catch OY	Recreational Estimate	Commercial OY	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North x/	4,795	3,115	673	2,442	2,239	91.7	203	8.3
Nearshore		987	663	324	161	na	163	na
Shelf		968	10	958	928	na	30	na
Slope		1,160	0	1,160	1,150	na	10	na
Minor Rockfish South y/	3,506	2,015	732	1,283	714	55.7	569	44.3
Nearshore		662	532	130	23	na	107	na
Shelf		714	200	514	194	na	320	na
Slope		639	0	639	497	na	142	na

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was designated as overfished in 1999. Coastwide, lingcod is estimated to be at 15 percent of its unfished biomass. An assessment was conducted in 2000 and updated for 2001. The stock assessment included parts of Canadian waters, therefore the U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total for that area. The ABC of 745 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 577 mt is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2009. The total catch OY is reduced by 326 mt, the amount that is estimated to be taken by the recreational fishery, resulting in a commercial OY of 251 mt. The open access total catch allocation is 48 mt (19 percent of the commercial OY) and the open access landed catch value is 38 mt. The limited entry total catch allocation is 203 mt and the landed catch value is 163 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are expected to land a small amount of lingcod (4-5 mt), but do not have a specific allocation at this time.

c/ "Other species" - These species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted only.

d/ A new assessment was prepared in 2002 for whiting and the stock is believed to be below 25 percent of its unfished biomass. The U.S.-Canada ABC of 208,000 mt is based on the 2002 assessment results with the application of an Fmsy proxy harvest rate of F40% and is based on a mid-level recruitment assumption. The U.S. whiting ABC is 80% or 166,000 mt. Application of the 40/10 default harvest policy to the ABC results in a coastwide OY of 162,000 mt. The U.S. whiting OY is 80 percent or 129,600 mt. The commercial OY for whiting is 106,920 mt (the 129,600 mt OY minus the 22,680 mt tribal allocation), and is allocated with 42 percent (44,906 mt) going to the shore-based sector, 24 percent (25,661 mt) going to the mothership sector, and 34 percent (36,353 mt) going to the catcher/processor sector. Discards of whiting are estimated from observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N lat. - A new sablefish assessment was done in 2001 for the area north of Point Conception (34°27'N lat.). Sablefish north of 34°27'N lat. is

estimated to be between 27 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (4,786 mt) is based on an environmentally driven model with an Fmsy proxy of F45%. The ABC for the management area north of 36° N lat. is 4,644 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N lat is 4,367 mt, which is based on the application of the 40-10 harvest rate policy, and is 97.04 percent of the OY from the surveyed area. The total catch OY is reduced by 10 percent for the tribal set aside (437 mt) and by 24.7 mt for compensation to vessels that conducted resource surveys. The remainder (3,906 mt) is the commercial total catch OY. The open access allocation of 9.4 percent of the commercial OY, results in an open access total catch OY of 367 mt. The limited entry total catch OY is 3,539 mt, 90.6 percent of the commercial OY. The limited entry total catch OY is further divided with 58 percent (2,052 mt) allocated to the trawl fishery and 42 percent (1,486 mt) allocated to the non-trawl fishery. Discard rates will be applied as follows: 22 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. The resulting landed catch values are: 1,601 mt for limited entry trawl, 1,367 mt for limited entry fixed gear, 338 mt for open access, and 424 mt for the tribal fisheries.

f/ Sablefish south of 36° N lat. - The ABC of 333 mt is the sum of 142 mt (2.96 percent of the ABC from the new 2001 survey based assessment) and 191 mt (based on historical landings). The total catch OY (229 mt) is the sum of 133 mt (2.96 percent of the OY from the new 2001 survey based assessment with the application of the 40-10 harvest rate policy) and 96 mt (that portion of the ABC based on historical landings south of Pt. Conception that was reduced by 50 percent to address uncertainty due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 211 mt.

g/ Dover sole north of 34°27'N lat. was assessed as a unit in 2001 and is estimated to be at 29% of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 71.6 mt for compensation to vessels that conducted resource surveys, resulting in a commercial OY of 7,368 mt. Discards are assumed to be 5 percent, resulting in a landed catch value of 7,000 mt.

h/ Petrale sole was estimated to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the final ABC for the Vancouver-Columbia area (1,262 mt) is based on an F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ "Other flatfish" are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was designated as overfished in 1999. The ABC (640 mt) is based on the 2000 assessment which was updated for 2001. The total catch OY (350 mt) is based on a 70 percent probability of rebuilding the stock to Bmsy by the year 2042. The landed catch value is 294 mt. The landed catch value is based on a discard rate of 16 percent. Tribal vessels are expected to land only trace amounts of POP in 2002 and do not have a specific allocation at this time.

k/ Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and is estimated to be at 24 percent of its unfished biomass. Therefore, it was declared overfished in 2001. The ABC (3,727 mt) is based on an F50% Fmsy proxy. The OY (856 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy within 37 years. The OY is reduced by 3 mt for the amount estimated to be taken as recreational catch, resulting in a commercial OY of 853 mt. The commercial OY is divided with open access receiving 3 percent (26 mt) and limited entry receiving 97 percent (827 mt). The landed catch equivalent for the open access fishery is 21 mt. The limited entry allocation is reduced by 150 mt for anticipated bycatch in the at-sea whiting fishery and an additional 40 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 575 mt. Tribal vessels are expected to land about 27 mt of widow rockfish

in 2002, but do not have a specific allocation at this time.

m/ Canary rockfish is estimated to be at 22 percent of its unfished biomass in the north (north of Cape Blanco) and 8 percent of its unfished biomass in the south (south of Cape Blanco). Canary rockfish was declared overfished in 2000. The coastwide ABC (228 mt) is based on an Fmsy proxy of F50%. The coastwide OY of 93 mt (the sum of 73 mt for the northern area, plus 20 mt for the southern area) is based on a 52 percent probability of rebuilding the stock to Bmsy by the year 2056. The OY is reduced by 5 mt for research surveys and 44 mt for the estimated recreational catch, resulting in a commercial OY of 44 mt. The commercial OY is divided with open access receiving 12.3 percent (5 mt) and limited entry receiving 87.7 percent (39 mt). The landed catch value for the open access fishery is 4.5 mt. The 39 mt limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 30 mt. The landed catch value is based on a discard rate of 16 percent. However, the specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are expected to land about 2.5 mt of canary rockfish in 2002, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - The ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of an F50% Fmsy proxy. Because the unfished biomass is estimated to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt, near the recent average landed catch, to discourage effort on chilipepper, which is known to have bycatch of overfished bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Of the commercial OY, open access is allocated 44.3 percent (879 mt) and limited entry is allocated 55.7 percent (1,106 mt). The assumed discard is 16 percent, resulting in a open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt. In the north, chilpepper is included in the minor shelf rockfish OY.

o/ Bocaccio rockfish is estimated to be at 2 percent of its unfished biomass and was designated as overfished in 1999. The ABC of 122 mt for the Monterey and Conception areas are based on an F50% Fmsy proxy. The OY (100 mt) is based on the rebuilding plan, which has a 67% probability of rebuilding the stock to Bmsy by the year 2033. The OY is reduced by 56 mt for the amount estimated to be taken as recreational harvest, resulting in a 44 mt commercial OY. Open access is allocated 44.3 percent (19 mt) of the commercial OY and limited entry is allocated 55.7 percent (25 mt) of the commercial OY. The open access landed catch value is 16 mt and the limited entry landed catch value is 21 mt. The landed catch value is based on a discard rate of 16 percent. In the north, bocaccio is included in the minor shelf rockfish OY.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt total catch OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish is estimated to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with an Fmsy proxy of F50%. The OY (3,146 mt) was set equal to the ABC. To derive the commercial OY (3,131 mt) the total catch OY is reduced by 15 mt, the amount estimated to be taken in the recreational fishery. The open access allocation (260 mt) is 8.3 percent of the commercial OY. The limited entry allocation (2,871 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 400 mt is subtracted from the limited entry allocation. An additional 150 mt is deducted for the shore-based whiting fishery. The remainder (2,471 mt) is further reduced by 20 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 2,007 mt. The open access landed catch equivalent is 218 mt, given the assumed discard of 16 percent. Tribal vessels are expected to land about 300 mt of yellowtail rockfish outside their directed whiting fishery in 2002, but do not have a specific allocation at this time.

r/ Shortspine thornyhead - A new assessment was done for shortspine thornyhead in 2001 and the stock is estimated to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34°27'N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy, resulting in a commercial OY of 948 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (945 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value of 757 mt. There is no ABC or OY for the southern Conception area. Tribal vessels are expected to land about 1 mt of

shortspine thornyheads, but do not have a specific allocation at this time.

s/ Longspine thornyhead is estimated to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at an F50% Fmsy proxy. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 6 mt for compensation to vessels that conducted resource surveys, resulting in a commercial OY of 2,455 mt. To derive the landed catch equivalent of 2,037 mt, the limited entry allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the northern Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). The ABC was reduced by 50 percent to obtain the OY (195 mt), this reduction addresses uncertainty in the stock assessment due to limited information. There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and is estimated to be at less than 10 percent of its unfished biomass. Therefore cowcod was declared overfished in 2000. The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on a 55 percent probability of rebuilding the stock to Bmsy by the year 2094. Cowcod retention will not be permitted in 2002.

v/ Darkblotched rockfish was assessed in 2000 and estimated to be at 22 percent of its unfished biomass. The stock was declared overfished in 2001. An update to the assessment which incorporated new data indicates that the stock may be at 12 percent of the unfished biomass. The ABC of 187 mt is based on the updated assessment with an Fmsy proxy of F50%. The OY of 168 mt is based on a 70 percent probability of rebuilding the stock to Bmsy by 2034. For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry allocation. The landed catch value for the remaining limited entry fisheries is 130 mt. The landed catch value is based on a discard rate of 20 percent. Specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are expected to land minimal amounts of darkblotched rockfish in 2002, but do not have a specific allocation at this time.

w/ Yelloweye rockfish was assessed in 2001 and is estimated to be at 7 percent of its unfished biomass off northern California and at 13 percent of its unfished biomass off Oregon, indicating that it is overfished at this time. The 27 mt coastwide ABC (5 mt for the Monterey area and 22 mt for the areas north of 40°10'N lat.) is based on an Fmsy proxy of F50%. As a precautionary measure, until rebuilding measures can be adopted, the coastwide ABC has been reduced by 50 percent to obtain the OY of 13.5 mt (2.5 mt for the Monterey area and 11 mt for the areas north of 40°10'N lat.) The OY is reduced by 8.81 mt for the amount estimated to be taken as recreational harvest, and 1 mt for the amount expected to be taken in the tribal fishery, resulting in a commercial OY of 3.69 mt. Specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC (4,795 mt) is the sum of the individual "remaining rockfish" ABCs (2,727 mt) plus the "other rockfish" ABCs (2,068 mt). The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY (3,115 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish (see footnote aa/), and other rockfish ABCs are reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 673 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,442 mt. Open access is allocated 8.3 percent (203 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,239 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish, resulting in a an open access landed catch value of 188 mt and a limited entry landed catch value of 1,852 mt. Tribal vessels are expected to land about 10 mt of minor rockfish (2 mt of minor nearshore rockfish, 4 mt of shelf rockfish, and 4 mt of slope rockfish) in 2002, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC (3,506 mt) is the sum of the individual "remaining rockfish" ABCs (854 mt) plus the "other rockfish" ABCs (2,652). The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote bb/), and the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 732 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,283 mt. Open access is allocated 44.3 percent (569 mt) of the commercial OY and limited entry is allocated 55.7 percent (714 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish, resulting in an open access landed catch value of 484 mt and a limited entry landed catch value of 582 mt.

z/ Bank rockfish - The ABC of 350 mt is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish - The ABC (1,115 mt) which is based on a 2000 assessment, is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards the minor rockfish OY in the north.

bb/ Blackgill rockfish is estimated to be at 51 percent of its unfished biomass. The ABC (343 mt) is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been quantifiably assessed. Beginning in 2002, an ABC and OY have been specified for yelloweye rockfish, in the Monterey and Conception areas. Therefore, it has been removed from the "other rockfish" category.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

BILLING CODE 3510–22–C

(2) Section IV *NMFS Actions*, B. *Limited Entry Fishery*, (3)*Whiting* is revised; and Section V *Washington Coastal Tribal Fisheries*, D. *Pacific Whiting*is revised.

B. Limited entry

* * * * *

(3) Whiting. Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) Allocations. The non-tribal allocations, based on percentages that are applied to the commercial OY of 106,920 mt in 2002 (see 50 CFR 660.323 (a)(4)), are as follows:

(i) Catcher/processor sector—36,353 mt (34 percent);

(ii) Mothership sector—25,661 mt (24 percent);

(iii) Shore-based sector—44,906 mt (42 percent). No more than 5 percent (2,245 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2002.

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V. Washington Coastal Tribal Fisheries

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D. Pacific Whiting The tribal allocation is 22,680 mt.

Classification

The final whiting specifications and management measures for 2002 are issued under the authority of the Magnuson-Stevens Act and are in accordance with 50 CFR part 660, the regulations implementing the Pacific Coast groundfish FMP.

For the reasons described below, the Assistant Administrator for Fisheries NOAA, finds that good cause exists to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment procedures are impracticable and contrary to the public interest. The Pacific Coast Groundfish FMP requires that fishery specifications be evaluated each year using the best scientific information available. A stock assessment for whiting was prepared in early 2002, using the most recent survey data.

Because of the timing of the resource survey upon which the assessment is based, it was not available for use in a stock assessment that could be ready for the September-November management cycle when the rest of the groundfish

specifications were set. In addition, the survey for this species is done only every 3 years. Therefore, the Council and NMFS decided it was best to use the newest data for the adoption of the 2002 ABC and OY in order, rather than use 4-year-old data from the prior survey. The preliminary indication from survey data was that the biomass had declined in recent years and the ABC and OY recommended for 2002 would be substantially lower than those for 2001. Therefore, for resource conservation purposes, it was particularly important to use the most recent data. Finally, since the major fishery for whiting does not start until April 1, there was time to delay the adoption of the new ABC and OY, until the new information was available in March. Last year's whiting specifications were carried over in the interim for 2002 and were announced in a final rule published on March 7, 2002 (67 FR 10490). In the final rule, it was explained that the specification would be adjusted following the Council's March meeting and announced in the **Federal Register** as an emergency rule. This action has been publicized widely through the Council process. It will not go through prior notice and opportunity for public comment as doing so would be impracticable and contrary to the public interest. It is impracticable and contrary to the public interest because NMFS needs to take immediate action to ensure that the whiting fishery stays within its overall harvest allocation (which is substantially lower than the harvest allocation for 2001) while allowing the various sectors of the fishery the opportunity to fully harvest their sector's allocations. To delay the rule beyond the start of the fishery could result in some sector allocations being exceeded and possible early closures for other sectors as a result of excessive harvest in the early season.

The reasons described above, pursuant to 5 U.S.C. 553(d)(3), constitute good cause to waive the 30-day delay in effectiveness, so that this emergency rule may become effective before the fishery begins on April 1, 2002.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS has re-initiated consultation on the Pacific whiting fishery associated with the (whiting BO) issued on December 15, 1999. During the 2000 whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the whiting BO's incidental take statement's incidental take estimates, 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was well below the 11,000 fish incidental take estimates. The re-initiation will focus primarily on additional actions that the whiting fisheries would take to reduce chinook interception, such as time/area management. NMFS is gathering data from the 2001 whiting fisheries and expects that the re-initiated whiting BO will be completed by April 2002. During the reinitiation, fishing under the FMP is within the scope of the December 15, 1999, whiting BO, so long as the annual incidental take of chinook stays under the 11,000 fish bycatch limit.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

Dated: April 10, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–9083 Filed 4–12–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010914227–2063–02; I.D. 080201E]

RIN 0648–AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action is necessary to stabilize fully utilized Pacific cod resources harvested with hook-and-line and pot gears in the Bering Sea and Aleutian Islands Area (BSAI). This will be accomplished by issuing endorsements for exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries by long-time participants. This final rule also adds a new definition for directed fishing for Community Development Quota (CDQ) fisheries and clarifies discard provisions for the individual fishing quota (IFQ) and CDQ fisheries. The intended effect of this action is to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective May 15, 2002, except for § 679.4(k)(9)(i), which will be effective on January 1, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel-Durall, or Room 413–1 on the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or email at *jay.ginter@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone in the BSAI off Alaska under the Fishery Management

Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Background of Amendment 67

Amendment 67 to the FMP was recommended by the Council in April 2000 to address the concern that fishermen who have made significant long-term investments and have long catch histories in the hook-and-line or pot gear BSAI Pacific cod fisheries needed protection from fishermen who have no or limited history in those fisheries. This concern increased after implementation of Amendment 64 to the FMP, which divided a portion of the BSAI Pacific cod total allowable catch (TAC) among the hook-and-line and pot gear sectors (i.e., catcher vessels and catcher/processors). The specific provisions of that action can be found in the final rule implementing Amendment 64 (65 FR 51553, August 24, 2000).

Amendment 67 is a continuation of the License Limitation Program (LLP). The LLP was recommended by the Council and approved and implemented by NMFS to address concerns of excess fishing capacity in the groundfish and crab fisheries off Alaska. More information on the purpose and objectives of the LLP can be found in the final rule implementing the original provisions of the LLP (63 FR 52642, October 1, 1998).

A proposed rule to implement Amendment 67 was published in the **Federal Register** with a 45-day public comment period (66 FR 49908, October 1, 2001). NMFS received 9 letters of comment on the proposed rule which are summarized and responded to in the *Response to Comments,* below.

Amendment 67 establishes Pacific cod species endorsements and the qualifications for those endorsements. A Pacific cod endorsement, specific to the non-trawl gear used by the vessel, must be specified on a person's LLP groundfish license for that person to participate in the hook-and-line or pot gear BSAI Pacific cod fisheries. The following provides summary information on general and specific eligibility requirements for Pacific cod endorsements and will be the Small Entity Compliance Guide for purposes of the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act). More information on the eligibility requirements, including the rationale for specific provisions, is in the proposed rule implementing Amendment 67 (66 FR 49908, October 1, 2001).

Small Entity Compliance Guide for Amendment 67

General Information on Eligibility

1. All qualifying amounts are in round weight.

2. Pacific cod that was harvested for the commercial bait fishery and properly documented will be applied toward the qualifying amount.

3. Pacific cod harvested for personal use bait will not be applied toward the qualifying amount.

4. Pacific cod harvested in the Bering Sea Subarea or the Aleutian Islands Subarea will be applied toward the qualifying amount. However, a license holder will be authorized to participate only in an area for which he or she has an area endorsement.

5. Pacific cod that was caught and discarded will not be applied toward the qualifying amount.

Specific Information on Eligibility

1. To receive a hook-and-line gear Pacific cod endorsement for use on a catcher/processor, a license holder must have:

A. An LLP groundfish license with a catcher/processor designation;

B. Harvested at least 270 metric tons (mt) round weight of Pacific cod with hook-and-line gear in the directed commercial BSAI Pacific cod fishery in any one of the years 1996, 1997, 1998, or 1999; and

C. Harvested the qualifying amount on the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

2. To receive a pot gear Pacific cod endorsement for use on a catcher/processor, a license holder must have:

A. An LLP groundfish license with a catcher/processor designation;

B. Harvested at least 300,000 pounds (lb) (136 mt) round weight of Pacific cod with pot gear in the directed commercial BSAI Pacific cod fishery in each of any two of the years 1995, 1996, 1997, or 1998; and

C. Harvested the qualifying amount on the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

3. To receive a hook-and-line gear Pacific cod endorsement for use on a catcher vessel, a license holder must have:

A. An LLP groundfish license with a catcher vessel designation;

B. Harvested at least 7.5 mt round weight of Pacific cod with hook-and-line gear or jig gear in the directed commercial BSAI Pacific cod fishery in any one of the years 1995, 1996, 1997, 1998, or 1999; and

C. Harvested the qualifying amount on the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

4. To receive a pot gear Pacific cod endorsement for use on a catcher vessel, a license holder must have:

A. An LLP groundfish license with a catcher vessel designation;

B. Harvested at least 100,000 lb (45 mt) round weight of Pacific cod with pot gear or jig gear in the directed commercial BSAI Pacific cod fishery in each of any two of the years 1995, 1996, 1997, 1998, or 1999; and

C. Harvested the qualifying amount on the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

Exemptions to the Pacific Cod Endorsement

Except as provided here, a license holder would need to have a Pacific cod endorsement on his or her LLP groundfish license to conduct directed fishing for Pacific cod in the BSAI with hook-and-line gear or pot gear, including Pacific cod harvested for the commercial bait fishery. Furthermore, the license holder would have to use the specific non-trawl gear designated with the Pacific cod endorsement.

1. Catcher vessels less than 60 ft (18.3 mt) length overall (LOA) are exempted from the requirement to have a Pacific cod endorsement.

2. Vessels exempted from the requirements of the LLP (see § 679.4(k)(2)) are exempted from the requirement to have a Pacific cod endorsement.

3. Vessels harvesting Pacific cod for personal use bait are exempted from the requirement to have a Pacific cod endorsement.

Other Provisions—Combining Catch Histories

A license holder can combine the catch history of a vessel that sank with the catch history of a replacement vessel to meet eligibility requirements if:

1. The vessel that sank was used as the basis of eligibility for the original LLP groundfish license;

2. That vessel sank after January 1, 1995; and

3. The sunken vessel was replaced with a vessel by December 31 of the year that was two years after the vessel sank.

This is the only exception to the single catch history (i.e., a catch history earned on one vessel) requirement for eligibility.

Unavoidable Circumstances

A license holder can receive a Pacific cod endorsement, even if he or she does not meet the eligibility requirements, if that license holder was prevented from meeting the eligibility requirements by unavoidable circumstances. To qualify for a Pacific cod endorsement under the unavoidable circumstances provision a license holder must demonstrate that:

1. But for the unavoidable circumstances, he or she could have made sufficient landings to meet the requirements for a particular Pacific cod endorsement from the vessel that was the basis for eligibility for his or her LLP groundfish license;

2. He or she had the specific intent to use that vessel to conduct directed fishing for Pacific cod in the BSAI during the relevant time period and that the vessel had the capability to have made harvests sufficient to meet the eligibility requirements;

3. His or her specific intent was thwarted by circumstances that were unavoidable, unique to the person or vessel, unforeseen, and reasonably unforseeable;

4. He or she took all reasonable steps to overcome the circumstances; and

5. He or she harvested any amount of Pacific cod in the BSAI with non-trawl gear after the vessel that was used as the basis of eligibility for the license holder's groundfish license was prevented from participating by the unavoidable circumstances but before April 16, 2000.

Species Endorsements in the CDQ Fisheries

The Council recommended that the provisions of Amendment 67 apply to the CDQ fisheries. This means that vessels not authorized to harvest Pacific cod under the LLP will be prohibited from directed fishing for Pacific cod CDQ. However, because NMFS regulations do not currently define directed fishing for Pacific cod in the CDQ fisheries, a new definition and other changes are provided to give effect to the Council's recommendation.

Through the CDQ program, NMFS allocates 10 percent of pollock and 7.5 percent of the BSAI groundfish, prohibited species, halibut, and crab total allowable catch (TAC) to 65 eligible Western Alaska communities. The CDQ groups to which the TAC is allocated are expected to manage their allocations of CDQ and Prohibited Species Quota to account for bycatch as well as target catch. The CDQ groups are prohibited from exceeding any of their CDQ allocations, which prevents continued fishing for one groundfish species once the quota of another groundfish or halibut bycatch species is reached.

In the non-CDQ fisheries, NMFS defines directed fisheries based on the amount of retained catch of a given species relative to the amount of other groundfish species on board the vessel. When a TAC amount for a species is approached, NMFS closes directed fishing for that species but allows fishing to continue in other fisheries in which the species is taken incidentally.

Thus, in contrast to the non-CDQ fisheries, NMFS has traditionally not needed to define directed fishing within the CDQ program and current regulations prohibit the use of CDQ catch as a basis for calculating the maximum retainable bycatch (MRB). These regulations were implemented because directed fishing closures did not apply to the CDQ fisheries. Further, because there are no provisions for regulatory discard, vessels engaged in CDQ fisheries are often required to retain all catch.

Implementing Amendment 67 requires that the existing regulations be amended as follows: First, revise the definition of directed fishing in § 679.2 to remove specific reference to the CDQ fisheries. This reference was appropriate when the only directed fishery defined under the CDQ Program was pollock. However, under this final rule, directed fishing for Pacific cod in the CDQ fisheries would be defined following the same procedure as the non-CDQ fisheries. Second, allow the use of CDQ species as basis species for calculating retainable amounts of other CDQ species. This revision is necessary to determine whether a vessel is directed fishing for Pacific cod in the CDQ fisheries and, therefore, would be required to have a species endorsement. Third, allow regulatory discards of Pacific cod by vessels that do not have a Pacific cod species endorsement. This revision is necessary so that vessel operators who do not have a Pacific cod species endorsement can comply with the MRB amounts of Pacific cod.

This action also clarifies the existing CDQ regulations by specifically allowing the regulatory discard of sablefish when their retention is prohibited by other regulations.

Changes From the Proposed Rule

1. New paragraphs (F) and (G) are added at § 679.4(k)(9)(iii). These paragraphs clarify eligibility requirements specified in the preamble to the proposed rule and recommended by the Council in April 2000. Paragraph (F) provides that only harvests made from the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license will count toward eligibility amounts. This provision was recommended by the Council to ensure that a person would not use more than one vessel's fishing history to qualify for a Pacific cod endorsement, except under the combination of landings provision at § 679.4(k)(9)(v)(A). Paragraph (G) provides that, except as specified at § 679.4(k)(9)(iii)(D), only harvests made in the directed fishery for Pacific cod will count toward eligibility amounts. This provision is consistent with FMP amendment language provided by the Council and approved by NMFS.

2. Language at § 679.4(k)(9)(v)(B)(4) regarding hardship provisions is revised in response to concerns in a comment (see Response to Comments). Accordingly, any amount of BSAI Pacific cod harvested on a replacement vessel after the vessel that was used as the basis of eligibility for a person's groundfish license was prevented from participating but before April 16, 2000, will be sufficient to meet the requirement for a landing. A person will not be required to demonstrate that a landing was made during the endorsement period to be considered eligible for a Pacific cod endorsement under the unavoidable circumstances provision.

3. Language at § 679.7 and § 679.20 is revised because the new requirements for the CDQ Program under Amendment 67 that were in the proposed rule were impacted by an emergency interim rule that provided management measures to protect Steller sea lions (67 FR 956, January 8, 2002):

A. The revision of § 679.7(d)(16) supersedes the suspension of this paragraph published in the emergency interim rule (67 FR 956, January 8, 2002). No changes were made to the language in paragraph (d)(16) as proposed. This final rule merely replaces the suspended paragraph (d)(16) with an effective paragraph (d)(16);

B. The revision of § 679.7(d)(23) supersedes the suspension of this paragraph published in the emergency interim rule at 67 FR 956, January 8, 2002. Language in paragraph (d)(23) was revised to specifically indicate the regulatory provision that would prevent retention of sablefish. Also, this final rule replaces the suspended paragraph (d)(23) with an effective paragraph (d)(23);

C. Section 679.7(d)(26) is deleted. This paragraph was added by the emergency interim rule (67 FR 956, January 8, 2002), to replace the suspended paragraph (d)(16). However,

with the revision of § 679.7(d)(16) in this final rule, paragraph (d)(26) is no longer necessary;

D. The revision of § 679.20(f)(2) supersedes the suspension of this paragraph published in the emergency interim rule at 67 FR 956, January 8, 2002. No changes were made to the language in paragraph (f)(2) as proposed. This final rule merely replaces the suspended paragraph (f)(2) with an effective paragraph (f)(2);

E. The proposed revision to § 679.20(f)(3) is not implemented by this final rule. This proposed revision, which revised how directed fishing would be determined under the CDQ Program, is not implemented because it would conflict with management measures designed to protect Steller sea lions and implemented by the emergency interim rule at 67 FR 956, January 8, 2002; and

F. Section 679.20(f)(4) is removed. This paragraph was added by the emergency interim rule at 67 FR 956, January 8, 2002, to replace the suspended paragraph (f)(2). However, with the revision of § 679.20(f)(2) in this final rule, paragraph (f)(4) is no longer necessary.

4. Language at § 679.7(f)(8) is revised to clarify the discard requirements pursuant to the IFQ Program now that Pacific cod endorsements are necessary on a person's LLP groundfish license and a person's Federal Fishery Permit to harvest Pacific cod in a directed fishery. Currently, IFQ fishermen are prohibited from discarding Pacific cod caught when IFQ halibut or IFQ sablefish are on board. The revision of § 679.7(f)(8) will specify that IFQ fishermen will need to comply with Pacific cod endorsement requirements for the LLP when retaining Pacific cod above the retainable amounts authorized for the BSAI as specified in Table 11 of this part and Pacific cod endorsement requirements for Steller sea lion management measures when retaining Pacific cod above the retainable amounts authorized for the BSAI as specified in Table 11 of this part and above the retainable amount authorized for the GOA as specified in Table 10 of this part.

5. Language at § 679.32(c)(1)(i), (c)(2)(i)(A), (c)(2)(ii)(A), and (f)(4) is revised to clarify retention and discard requirements for participants in the CDQ Program now that directed fishing requirements apply to the CDQ Program. These revisions specify the paragraphs or subparts to which a person must refer to comply with retention or discard requirements.

Response to Comments

NMFS received a total of 23 letters on the decision to approve, disapprove, or partially approve Amendment 67 and the proposed rule implementing Amendment 67. Of the 14 letters on the decision to approve, disapprove, or partially approve Amendment 67, 7 were for approval, 4 were for partial approval, and 3 were for disapproval of Amendment 67. Of the 9 letters on the proposed rule, 4 were in support, 4 suggested changes, and 1 was opposed to implementation of Amendment 67 as proposed.

NMFS policy prevents partial approval of fishery management plan amendments that establish a limited access system, because such an action would be tantamount to NMFS developing a limited access system without that system first being approved by a majority of the voting members of the appropriate fishery management council, an action prohibited by 16 U.S.C. 1854(c)(3) (Sec. 304(c)(3) of the Magnuson-Stevens Act). Therefore, the 4 letters that were received on Amendment 67 that recommended partial approval were considered letters for disapproval.

The letters that recommended partial approval and disapproval of Amendment 67 (7 letters), or that were opposed to or suggested changes to the proposed rule implementing Amendment 67 (5 letters), had comments in five main areas of concern: (1) General comments, (2) comments on the national standards at 16 U.S.C. 1851(a) (Sec. 301(a) of the Magnuson-Stevens Act), (3) comments on the analytical requirements of the National Environmental Policy Act, (4) comments on the analytical requirements of the Regulatory Flexibility Act and E.O. 12866, and (5) comments on the hardship and ''grandfather'' provisions. These comments are organized into those five topic areas for response by NMFS.

General Comments

Comment 1: Approval of Amendment 67 was based on inaccurate information. Examples cited were: (1) Use of the 1998 Stock Assessment and Fishery Evaluation Report (SAFE); (2) overstating the number of potential participants and thereby overstating the magnitude of the problem; and (3) deciding on an alternative while other analytical documents were being developed.

Response: NMFS disagrees that inaccurate information was used for approval of Amendment 67. First, the EA/RIR/IRFA for Amendment 67 was before the Council for initial review in April 1999. The 1998 SAFE Report was the most recent biological document available during the development of the EA/RIR/IRFA. The data presented in the EA/RIR/IRFA from the 1998 SAFE Report included information about the Eastern Bering Sea Pacific cod biomass and recruitment from 1978 through 1999; BSAI allowable biological catch (ABC), total allowable catch (TAC), and actual catch from 1980 through 1999; and projected biomass and ABC for Pacific cod age 3+ in the BSAI from 2000 through 2002. The Council was able to consider general trends and projections of the relevant Pacific cod biological data for over a 20-year time period. Amendment 67, as explained in the Problem Statement for the EA/RIR/IRFA, was recommended as an action because the Pacific cod resource in the BSAI was fully utilized. Concerns about declining ABC and TAC for Pacific cod was one of several reasons to consider action; other reasons included increased market value of cod products and increased competition from participants from other fisheries.

Second, the Council's consideration of the approximately 365 catcher vessels that appeared to qualify for a non-trawl gear designation did not overstate the problem. (Note: the exact number of catcher vessels with a non-trawl gear designation was not available at the time of Council consideration because the gear designation requirement was not effective until January 1, 2000). Without the Pacific cod endorsement requirement of Amendment 67, all of the approximately 365 vessels have the potential to participate in the BSAI Pacific cod hook-and-line and pot gear fisheries. The number of vessels suggested by one comment as a more accurate number to consider, 119 vessels, was the highest number of catcher vessels that participated in the BSAI Pacific cod fishery using pot gear. This occurred in 1995. The comment further indicated that recency requirements implemented in 2000 would make the vessel number of 119 more accurate than 365. This is not the case. Recency requirements that were implemented in 2000 only affected a person's LLP crab species license; the number of LLP groundfish licenses were not reduced by recency requirements. Therefore, the approximately 365 vessels was the appropriate number to use when considering potential impacts of the no action alternative.

Third, the Council was cognizant that other actions and analyses were ongoing when it made its recommendation for Amendment 67. The Council and NMFS, when deciding whether to

approve, disapprove, or partially disapprove the Council's recommendation, must use the best scientific information available. The guidelines to the national standards at § 300.315(b) states that ''[t]he fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP.'' Further, paragraph (b)(2) of § 300.315 states:

> FMPs must take into account the best scientific information available at the time of preparation. Between initial drafting of an FMP and its submission for final review, new information often becomes available. This information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

As indicated in this provision, the Council is not required to obtain perfect information before making a recommendation, nor is it prevented from making a recommendation until better information is available. If that were the case, the Council could rarely act. The Council is in the best position to determine whether the absence of information, or new information, provides a basis for a revision of management objectives or measures. Although this provision refers only to FMPs, NMFS believes it is reasonable to apply the same considerations to FMP amendments.

Comment 2: The comment period for approval, disapproval, or partial approval of Amendment 67 ended prior to the ending of the comment period for the proposed rule to implement Amendment 67. This means that a person could have provided a comment to the proposed rule that would have not been considered for the decision to approve, disapprove, or partially approve Amendment 67.

Response: The comment period to approve, disapprove, or partially approve FMP amendments, and the comment period for a proposed rule to implement an FMP amendment can run concurrently. However, the two comment periods have different purposes. The 60-day comment period for Amendment 67 (see Notice of Availability of Amendment 67, 66 FR 42833, Aug. 15, 2001) was intended to allow the public to comment on whether Amendment 67 should be approved, disapproved, or partially approved. The 45-day comment period for the proposed rule implementing Amendment 67 (see Proposed Rule Implementing Amendment 67, 66 FR 49908, Oct. 1, 2001) was intended to allow the public to comment on how NMFS planned to implement Amendment 67, if Amendment 67 was approved. The comment periods provided for Amendment 67 and the proposed rule to implement Amendment 67 are consistent with the requirements of the Magnuson-Stevens Act and the Administrative Procedure Act.

Comment 3: Amendment 67 made a disproportionate allocation to vessels that also qualified to fish for pollock under the American Fisheries Act (AFA).

Response: The EA/RIR/IRFA included an analysis of the dependence of fishermen on the BSAI Pacific cod fishery. These alternatives were evaluated based on the requirements set forth at 16 U.S.C. 1853(b)(6) for limited access systems, including the capability for vessels to be used in other fisheries. Persons that met the eligibility criteria the Council chose to represent dependence on the fishery received a Pacific cod endorsement, notwithstanding other permits that person may have held. It is noteworthy that vessels use trawl gear to fish for pollock, a different gear than can be used with a Pacific cod endorsement, i.e., hook-and-line gear or pot gear. Furthermore, the comment only asserted that a disproportionate allocation went to vessels that also qualify to fish pollock under the AFA and did not provide any data to verify that assertion.

Comment 4: Amendment 67 would have negative economic impacts on CDQ groups that depend on vessels to harvest their allocation of Pacific cod if those vessels do not receive Pacific cod endorsements.

Response: The Council evaluated the impacts of implementing Pacific cod endorsements on all small entities, including CDQ groups, and determined that the recommended alternative best addressed the problem statement for this action. The EA/RIR/IRFA at section 4.5.4 (page 88) states:

> The current License Limitation Program does not treat CDQ vessels any differently than non-CDQ vessels. A CDQ vessel must have an LLP license to fish groundfish in the BS and/or AI using fixed gear. The Council has indicated that CDQ vessels will not be exempted from the proposed P[acific] cod endorsements; those CDQ vessels harvesting BSAI P[acific] cod with fixed gear will need to hold a P[acific] cod endorsement in addition to their LLP area endorsement to fish either CDQ P[acific] cod or P[acific] cod from the directed fixed gear fishery.

Comments on the National Standards in the Magnuson-Stevens Act

Comment 1: None of the alternatives considered in the EA/RIR/IRFA has an impact under national standard 1, the prevention of overfishing. Thus, the prevention of overfishing provides no rationale for the proposed action.

Response: The national standards are statutory principles that must be followed when developing a proposed action (see § 600.305(a)(3)) but they are not necessarily the rationale or objective of a proposed action. In other words, a proposed action does not have to be based on national standards to be valid; instead it must state a management objective that is consistent with all the national standards to be valid. For example, Amendment 67 was proposed to establish management measures that would limit the entry of persons who have not participated in, or who have not participated at a level that constituted significant dependence on, the BSAI Pacific cod hook-and-line and pot gear fisheries. The objective of Amendment 67 is to conserve Pacific cod resources through the reduction of overcapitalization, which leads to waste and inefficiencies in the use of resources.

Comment 2: All of the alternatives to Amendment 67 that NMFS considered, including the status quo, used the same information. National standard 2 requires that management measures are to be based upon the best scientific information available. Use of best available information, therefore, does not establish a preferred alternative, and thus provides no rationale for Amendment 67. Furthermore, NMFS did not use the best scientific information available.

Response: As explained in *Response 1* to Comments on the National Standards in the Magnuson-Stevens Act, national standards are statutory principles that must be adhered to when developing management measures, but they do not necessarily provide a rationale for management measures. NMFS agrees that the same data were used when comparing the various alternatives. This methodology ensures a fair and objective weighting of all alternatives given the data available.

NMFS disagrees with the comment that the best scientific information available was not used in developing Amendment 67. See *Response 1* to General Comments for further discussion regarding the use of best scientific information available to make management decisions.

Comment 3: None of the alternatives under consideration has an impact

under national standard 3. In other words, improved management under national standard 3 provides no rationale for approving Amendment 67.

Response: Currently, the Pacific cod stock is managed as a unit throughout its range, i.e., ABCs and TACs are developed for the Bering Sea and Aleutian Islands Management Area. Amendment 67 does not affect that management. As for national standard 3 not providing a rationale for Amendment 67, see *Response 1* to Comments on the National Standards in the Magnuson-Stevens Act.

Comment 4: There is no support for the assertion of the fact in the EA/RIR/IRFA that the number of vessels expected to qualify under any of the alternatives should not allow an individual or entity to acquire an excessive share of the fixed gear cod fishery in the BSAI; therefore Amendment 67 does not comply with national standard 4.

Response: The License Limitation Program, of which Amendment 67 is a part, limits the number of groundfish licenses that any one person can hold to 10 licenses (see § 679.7(i)(1)(i)). A person is defined at § 679.2 as ''any individual (whether or not a citizen of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.'' (Note: the definition of person was revised after the determination was made on Amendment 67; however, the definition of person included individuals, corporations, partnerships, and other entities before its revision). It was this limit and definition that was the basis for the determination that an excessive share of fishing privileges would not be acquired.

Comment 5: The standards used to determine eligibility for a Pacific cod permit were not fair and equitable, in violation of national standard 4, because different requirements were used for different methods of catching Pacific cod.

Response: The Council, when developing the eligibility criteria for Pacific cod endorsements, considered the historical practices in, and dependence on, the BSAI Pacific cod hook-and-line and pot gear fisheries, along with present participation patterns. Table 3.1 of the EA/RIR/IRFA (pg. 42) provided information on participation patterns in the BSAI Pacific cod hook-and-line and pot gear fisheries. Numbers of vessels that participated and the percentage of the Pacific cod TAC harvested by those vessels were provided by gear and processing capability sectors from 1992 through 1999. The Council reviewed the distribution of catch (section 3.1.2 of the EA/RIR/IRFA) and vessel participation patterns (tables 3.3 through 3.8 of the EA/RIR/IRFA) and compared these data to determine the minimum and maximum numbers of participants among the various sectors. This comparison also helped illustrate the impact different eligibility periods would have on the number of eligible persons.

Cost data were not available to the Council, so it used harvest thresholds and average gross revenues as a proxy for traditional methods to determine the economics of the fishery. Various harvest thresholds were reviewed and a comparison was made on how many vessels achieved these different harvest thresholds (tables E.1 through E.4 of the EA/RIR/IRFA for pot vessels and tables 4.2, 4.3, 4.5, and 4.6 of the EA/RIR/IRFA for hook-and-line vessels). The Council, by comparing the change in the number of vessels as the level of harvest thresholds were increased, was able to surmise that certain levels of harvest thresholds correlated with consistent participation. Consistent participation, the Council determined, was a factor to consider for economic dependence. In other words, a person who had economic dependence on a fishery would have most likely participated more than one year.

The Council then compared average revenues of vessels per sector (section 4.2.2 of the EA/RIR/IRFA). This information allowed the Council to determine the potential decreases to average revenues for vessels at different levels of harvest thresholds for each sector, *i.e.,* the more vessels participating, the less each vessel would make on average. Each sector (catcher vessels using hook-and-line gear, catcher vessels using pot gear, catcher/processor vessels using hook-and-line gear, and catcher/processor vessels using pot gear) was considered separately because changes in the qualifying years and minimum harvest thresholds had different impacts on different sectors. The Council, through Amendment 67, was trying to achieve a level of participation that reflected historical participation patterns for each of the sectors.

The Council used all of this information for each sector to determine what eligibility requirements best reflected its understanding of the historical fishing practices and dependence of the BSAI Pacific cod hook-and-line and pot gear fisheries. The Council compared changes in average revenues based on changes in the number of eligible persons and used harvest levels and consistency of participation over time as a proxy for economic dependence. Eligibility requirements for each sector were chosen so that continued participation for economically dependent vessels was assured.

For some sectors, such as catcher/processor vessels using hook-and-line gear, varying the years of participation and the harvest thresholds had little impact on the number of qualifying vessels. This indicated to the Council that catcher/processor vessels using hook-and-line gear, as a sector, had a long and consistent history. This was an important consideration when the Council chose its eligibility requirements for this sector. On the other hand, catcher vessels using pot gear had significant variance depending on which years and harvest thresholds were used. This indicated to the Council that catcher vessels using pot gear, when considered as a sector, did not have a long and consistent history. Therefore, for this sector, the Council chose eligibility criteria that would decrease the number of participants. This decrease was intended to ensure that vessels in the sector that had historical and consistent participation based on the Council's analysis of the available data would be allowed to continue to participate at a level that reflected what the Council determined to be economic dependence.

Comment 6: Amendment 67 is predominately an economic allocation, in violation of national standard 5.

Response: National standard 5 provides that ''[c]onservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.'' Amendment 67, as a limited access action, is designed to limit units of effort in the BSAI Pacific cod hook-and-line and pot gear fisheries. The purpose of this limitation is to conserve Pacific cod resources through the reduction of overcapitalization, which leads to waste and inefficiencies in the use of resources. This purpose is accomplished partly through the mechanism of allocation. A secondary effect is the improvement of net economic return to persons who are eligible to participate. Although national standard 5 prohibits a measure that has economic allocation as its sole purpose, it does not prohibit actions that result in an economic allocation.

A limited access system, by design, limits participation in the affected fishery. Marginal participants and future potential participants often are precluded from the limited access fishery, making most limited access systems an economic allocation between those that are found eligible and those that are not. However, the purposes of Amendment 67, and the LLP, go beyond mere economic allocation. As stated above, the LLP was designed to provide stability in the fishing industry—through limits on capitalization and capacity—while the Council took action to further rationalize the fisheries under its authority.

Overcapitalization, excess harvest capacity, and economic waste in a fishery are economic inefficiencies. The LLP and Amendment 67 were designed as steps toward reducing those inefficiencies while enhancing the ability for NMFS to manage the fishery to achieve optimum yield. Therefore, although economic allocation is one of the results of Amendment 67, it is not its sole purpose.

Comment 7: Amendment 67 does not comport with national standard 6 because it does not allow fishermen to respond to contingencies and variations in stocks and efforts and excludes on purely economic grounds many fishermen who are thereby forced to rely more on overfished crab stocks.

Response: The comment misinterprets the meaning of national standard 6. National standard 6 provides that ''[c]onservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.'' The guidelines to national standard 6 at § 600.335(b) provide that ''[e]ach fishery exhibits unique uncertainties. The phrase ''conservation and management'' implies the wise use of fishery resources through a management regime that includes protection against these uncertainties.'' National standard 6 is not intended to require that management measures provide a means for fishermen to respond to contingencies and variations, but is intended to require that management measures ensure that variations and contingencies in fisheries, fishery resources, and catches do not cause conservation problems.

Review of the descriptions of variations and contingencies and examples to guard against those variations and contingencies found in § 600.335 indicate that the resource, and not the resource users, is the primary concern of national standard 6.

Comment 8: Amendment 67 fails to meet the legal requirements of national standard 7 because the preferred alternative is not compared to the status quo.

Response: Throughout the EA/RIR/IRFA the preferred alternative with its several options for each sector is compared to the status quo alternative. Ex-vessel revenue values are compared with expected revenues under the preferred alternative for each sector, and average gross revenues per vessel are provided for each alternative.

The EA/RIR/IRFA does not contain qualitative cost/benefit analysis. The authors cite the unavailability of cost data for the harvesting and processing sectors as the reason for its absence. However, guidelines for national standard 7 at § 600.340(d) provide that ''[i]f quantitative estimates are not possible, qualitative estimates will suffice.''

Comment 9: The EA/RIR/IRFA discussion in section 6.1 does not adequately analyze the impacts of Amendment 67 on fishing communities in violation of national standard 8.

Response: Section 6.1 of the EA/RIR/IRFA summarizes information provided in chapter 3 of the EA/RIR/IRFA. The following data were used to make determinations on Amendment 67 and evaluate potential impacts: (1) Harvest levels by vessels in each sector; (2) price and revenues resulting from that harvest; (3) locations of deliveries for processing (catcher vessels) or first wholesale (catcher/processor vessels); and (4) home port of vessels engaged in the BSAI Pacific cod hook-and-line and pot gear fisheries. The analysts indicated in the EA/RIR/IRFA that certain data could not be provided in detail due to confidentiality restrictions. However, the data provided were summarized qualitatively for the Council. This provided the Council with information on the relative importance of the Pacific cod fisheries on fishing communities.

In general, the socioeconomic impacts of Amendment 67 are more considerable to the individual operation than to fishing communities because the value of Pacific cod harvested with hook-and-line and pot gear in the BSAI is small in comparison to the value of other groundfish and crab species harvested. Also, although some operations will be eliminated from the hook-and-line and pot gear BSAI Pacific cod fisheries, these eliminations are dispersed and do not unduly impact particular communities over others.

Many of the coastal communities in Alaska and the Pacific Northwest participate in the crab and the groundfish fisheries as fishing vessel ports and as home to fisheries processors and fisheries support businesses. By protecting long-term participants, Amendment 67 also protects the fishing communities that are home ports, processing centers, and the location of support businesses for these long-term participants.

Comment 10: National standard 9 provides that ''[c]onservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.'' The EA/RIR/IRFA provides no support or rationale for Amendment 67 based on this national standard.

Response: Bycatch information is provided in section 3.6 of the EA/RIR/IRFA. The specific gears in the BSAI Pacific cod hook-and-line and pot gear fisheries have different bycatch rates for different species. For example, hook-and-line gear takes more halibut as bycatch than pot gear. The converse is true for crab, with pot gear taking more than hook-and-line gear. The analysis concludes that bycatch rates are low overall in the Pacific cod hook-and-line and pot gear fisheries compared to other fisheries and that such rates will only improve with further reductions in the ''race for fish'' through limited access measures. The ''race for fish'' is a term used to describe what occurs when too many vessels are fishing for a limited resource. Amendment 67 is a limited access system designed to reduce vessel numbers so that the ''race for fish'' is reduced or eliminated. Also, national standard 9 is not the rationale for Amendment 67. See *Response 1* to ''Comments on the National Standards in the Magnuson-Stevens Act'' for a discussion on the objectives of Amendment 67 and the purposes of the national standards.

Comment 11: The EA/RIR/IRFA provides no support or rationale for Amendment 67 under national standard 10, which provides that ''[c]onservation and management measures shall, to the extent practicable, promote the safety of human life at sea.''

Response: National standard 10 is not the rationale for Amendment 67. See *Response 1* to Comments on the ''National Standards in the Magnuson-Stevens Act'' for a discussion on the objectives of Amendment 67 and the purposes of the national standards. However, to the extent that Amendment 67 reduces the ''race for fish'' through limited access measures, it satisfies the objectives set by national standard 10.

This is illustrated through the review of Senator Murray's statement on behalf

of national standard 10 (Cong. Rec., Sept. 18, 1996 at S10818):

[T]his race for fish creates serious considerations in many fisheries. Under this race, fishers feel compelled to keep fishing even when the weather or conditions of the vessel or health of the captain or crew would suggest otherwise. Unless fishery management plans provide opportunities and incentives for fishers to sit out storms and return to port for repairs or medical attention, lives will continue to be lost.

Comments on National Environmental Policy Act (NEPA) Compliance

Comment 1: The Council should have prepared an Environmental Impact Statement (EIS) for Amendment 67.

Response: An EIS must be prepared for major Federal actions that would result in a significant impact on the human environment. For some Federal actions, an agency moves directly to an EIS. Alternatively, a method to determine whether a Federal action meets the level of significance necessary to require an EIS is through the development and review of an Environmental Assessment (EA). An EA must include a brief discussion of the need for the proposal, the alternative considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. Based on an analysis of the relevant considerations in the EA, a determination is made whether an EIS must be prepared, or if a finding of no significant impact (FONSI) can be issued.

A FONSI was issued for Amendment 67. The FONSI was based on the following determinations: (1) Amendment 67 would not change the TAC for Pacific cod, i.e., no changes to the impact on Pacific cod stocks; (2) Amendment 67 would not change the relative amounts of Pacific cod that would be harvested by the hook-and-line and pot gear sectors (gear allocations), resulting in no net gain in bycatch amounts, i.e., no changes to the impact on other groundfish and crab stocks; (3) Amendment 67 would not change overall location of the fishery, i.e., no increase in habitat impacts; and (4) Amendment 67 would not change the overall effort on, or the total catch of, any species, i.e, no changes in the biodiversity of the affected ecosystem. Based on those determinations, NMFS concluded that a FONSI, rather than development of an EIS, was appropriate.

The EA portion of the EA/RIR/IRFA also included an analysis of endangered and threatened species pursuant to the Endangered Species Act and potential impacts to marine mammals pursuant to the Marine Mammal Protection Act.

Comment 2: The EA/RIR/IRFA did not consider indirect effects of Amendment 67 or the cumulative effects that would result from the incremental impact of Amendment 67 when added to past, present, and reasonably foreseeable future actions.

Response: Direct effects are effects caused by the alternatives and occur at the same time and place as an alternative. For example, the reduction in participants and impacts on Pacific cod stocks are direct effects of the preferred alternative for Amendment 67 because they directly result from the action taken. Indirect effects are reasonably foreseeable effects caused by the alternatives, but that occur later in time or that are further removed from an alternative. For example, bycatch impacts are indirect effects of the preferred alternative for Amendment 67 because they are further removed, i.e., indirectly result, from the action taken. Cumulative effects are effects that contribute to incremental impacts to the human environment when added to the effects of past, present, and reasonably foreseeable future actions. For example, impacts to essential fish habitat (EFH) are cumulative effects because they must be considered along with other actions that affect the same area because of the overlapping nature of EFH for different fish species. All of the examples were evaluated in the EA/RIR/IRFA for Amendment 67.

Comments on Regulatory Flexibility Act (RFA) and Executive Order 12866 Compliance

Comment 1: The impacts of Amendment 67 were not analyzed pursuant to the Regulatory Flexibility Act.

Response: Section 6.3 of the EA/RIR/IRFA is the Initial Regulatory Flexibility Analysis (IRFA). Section 6.3 outlines the issues that an IRFA is required to address and proceeds to address those issues. This includes the estimated number of affected entities that are considered small entities for this action (355 catcher vessels, 67 catcher/processors, 5 shore-based processors, 6 communities where shore-based processors are located, and most of the communities where vessels are home-ported). Also included are the measures taken to reduce the impacts on small entities (excluding catcher vessels less than 60 ft (18.3 m) LOA from the requirement to have a Pacific cod endorsement and allowing catcher vessels of any length to use Pacific cod caught with jig gear for eligibility amounts). In section 6.3.9 of the EA/RIR/IRFA the IRFA concludes that:

Most persons recently participating in the fishery impacted by the proposed rule are small entities, as this term is defined under the RFA. The ownership, affiliation, and contractual characteristics of vessels operating in the fishery have not been analyzed to determine if they are independently owned and operated or linked to a larger parent company. Furthermore, because NMFS cannot quantify the exact number of small entities that may be affected by this action, or quantify the magnitude of those potential effects, NMFS cannot make a definitive finding regarding the economic impact of this rule. However, because the proposed action(s) would result in ''freezing'' the fleet sizes to those that have participated in the recent past, impacts would be expected to be minimal relative to the *No Action* alternative. Again, this assumes that vessels would participate in the fisheries they have in the past. Estimates of such a potential change in the absence of a limited entry program cannot be made, though indications are that given the current status of the opilio stocks, the number of pot vessels participating in the cod fishery would increase. In that case, a number of small entities could be adversely impacted by losing access to the BSAI cod fishery, though the magnitude of that impact cannot be determined. The adverse impacts to those vessels would be offset by other small entities not having their share of the cod harvest eroded by new entrants into the fishery. The measures discussed above as part of the preferred alternative are intended to protect small entities within the fishery, and to allow for new entry and flexibility in the <60′ pot and longline catcher vessel fleets.

As the foregoing indicates, the impacts of Amendment 67 were analyzed pursuant to the RFA given the data available to NMFS.

Comment 2: A reasoned determination that the benefits of Amendment 67 justify its costs was not performed pursuant to Executive Order 12866.

Response: Section 4.0 of the EA/RIR/IRFA is the Regulatory Impact Review (RIR), which responds in part to the analytical requirements of Executive Order 12866. The RIR provides details on the BSAI Pacific cod fisheries, including current fleet, description of the alternatives, impact of the alternatives on the current fleet sector by sector (vessels projected to qualify under the various options), average first wholesale revenues for catcher/processor vessels, average ex-vessel values for catcher vessels, other fishing opportunities, and the relationship between the alternatives and the Improved Retention/Improved Utilization Program. Further information to respond to the analytical requirements of Executive Order 12866 can be found in section 3.0, Historical Fixed Gear Pacific Cod Fishery

Information, and in section 5.0, Council's Preferred Alternative.

These three sections, along with the rest of the EA/RIR/IRFA, were used to determine that the costs associated with Amendment 67 were justified by the benefits.

Comment on the Hardship and ''Grandfather'' Provisions

Comment: The hardship provision in the proposed rule implementing Amendment 67 is inconsistent with Council intent and other license limitation hardship provisions and a further exemption to the eligibility requirements should be provided notwithstanding the Council's motion (*i.e.*, a ''grandfather'' provision for purchased vessels).

Response: NMFS disagrees that the hardship provision in the proposed rule was inconsistent with Council intent and other hardship provisions under the LLP. *The North Pacific Fishery Management Council News and Notes*, April 2000 (April 2000 Newsletter), contained the Council's action on Amendment 67. The following is taken directly from that document under the heading ''Other Issues.''

> *Grandfather provisions:* The Council voted *not* to include the grandfather provision for catcher processor vessels that were purchased between July 1, 1997, and December 31, 1998. The Council approved the Advisory Panel recommendation that vessels that sank after January 1, 1995, would be allowed to combine the catch history of the vessel that sank with the history of the replacement vessel, as long as: (1) The sunken vessel was LLP qualified, (2) A sunken vessel is replaced with a qualified replacement vessel within the normal time allowed by the IRS, and (3) Owner of the replacement vessel after combining catch histories must meet the qualifying criteria for that gear sector. (Emphasis in the original).

There is no further discussion of this decision in the April 2000 Newsletter. However, the Council did discuss both ''grandfather'' provisions at length during its deliberations and, as indicated above, voted to adopt the second ''grandfather'' provision (*i.e.*, for sunken vessels) and not the first ''grandfather'' provision (*i.e.*, for purchased vessels). A fundamental difference is apparent between these two provisions. The ''grandfather'' provision recommended by the Council allows a person to combine the history of one vessel with the history of another vessel to meet the qualifying criteria if special circumstances exist (*i.e.*, a vessel sank and was replaced). However, the person must meet the qualifying criteria to receive a Pacific cod endorsement. On the other hand, the ''grandfather'' provision reviewed by the Council but not recommended for approval would have totally exempted a vessel from the qualifying criteria.

The Council also recommended a hardship provision that was designed to assist applicants to achieve eligibility if they were prevented from meeting all the eligibility requirements by circumstances beyond their control. However, a person must demonstrate that they intended to participate during the eligibility period at a level sufficient to meet the eligibility criteria. The commonality between the recommended ''grandfather'' provision and the hardship provision is the importance of the eligibility criteria. To benefit from these provisions, a person would had to have met, or intended to meet, the eligibility criteria to be found eligible. The ''grandfather'' provision that the Council reviewed and did not recommend had no such requirement; a person would be found eligible based on ''reliance'' and ''investment.''

Although the Council and NMFS are sensitive to investment-backed expectations, the Council is not under an obligation to provide for eligibility based on economic decisions. The Council reviewed the various proposals and decided to recommend exemptions that required a connection to the eligibility criteria.

Finally, the comment requested that NMFS modify the hardship provision in this action to conform in substance with previous hardship provisions. NMFS, when crafting the language for the hardship provision in this action, was careful to try to maintain the Council's intent without making the language of the provision awkward. The April 2000 Newsletter contained the following statement as the last requirement for consideration under the hardship provision:

> Any amount of BSAI Pacific cod was harvested on the vessel in the BSAI *during the recency period* for that vessel type and that such harvest of Pacific cod occurred after the vessel was prevented from participating by the unavoidable circumstance *but before April 16, 2000*. (Emphasis added).

NMFS looked at the phrases ''during the recency period'' and ''but before April 16, 2000.'' Seemingly, these statements reflect two consistent requirements. However, all recency periods end either on December 31, 1998, or December 31, 1999. Therefore, a person who meets the first requirement (*i.e.,* harvesting any amount of BSAI Pacific cod during the recency period) automatically meets the second requirement (*i.e.,* harvesting any amount of BSAI Pacific cod before April 16, 2000). However, the converse is not true. A person could harvest Pacific cod before April 16, 2000, but not meet the first requirement.

This result indicated to NMFS that including the requirement ''but before April 16, 2000,'' was not only unnecessary but confusing. During the proposed rule stage, NMFS eliminated the phrase ''but before April 16, 2000'' because it was internally inconsistent. However, NMFS realizes that multiple interpretations can be derived from the same language. Therefore, in response to a letter that specifically requested that the phrase ''but before April 16, 2000'' be given effect and because the Council's use of both phrases created an ambiguity, NMFS will construe that ambiguity in favor of potential applicants. The new language in this final rule will reflect that any amount of Pacific cod harvested on the vessel in the BSAI after the vessel was prevented from participating but before April 16, 2000, will be sufficient to meet that requirement. A person will not be required to demonstrate that a landing was made during the endorsement period to be considered for eligibility under the unavoidable circumstances provision.

Classification

The Council prepared an environmental assessment for Amendment 67 that analyzes the impacts on the environment as a result of this action. The assessment indicated that the individual and cumulative impacts of this action would not significantly affect the quality of the human environment and a finding of no significant impact (FONSI) was signed.

An FRFA was prepared that describes the impacts this action may have on small entities. The analysis concluded that most persons who participate in the hook-and-line and pot gear BSAI Pacific cod fisheries are small entities, as this term is defined under the RFA. Implementation of Amendment 67 will limit fleet size by requiring a person to demonstrate that he or she achieved a specific level of participation in the past to be eligible for continued participation in the future. Impacts on participants who do not meet this criterion are expected to be minimal because their participation was below the level determined by the Council to be significant based on the available data. However, the Council considered two alternatives to counteract the adverse impacts to nominal or new participants who are small entities. These alternatives were: (1) The exemption of catcher vessels less than 60 ft (18.3 m) LOA from the requirement to have a Pacific cod endorsement; and (2) the ability to use jig gear landings and

commercial bait landings to meet the eligibility requirements for specific Pacific cod endorsements. The Council decided to adopt both alternatives to mitigate the adverse impacts to small entities to the greatest extent possible and still meet its goal to rationalize the BSAI Pacific cod longline and pot gear fisheries. Finally, NMFS cannot quantify the exact number of small entities that may be affected by this action, or quantify the exact magnitude of those potential effects. One comment was received regarding the analysis performed under the RFA. This comment was addressed in this rule (see Comment 1 under Comments on Regulatory Flexibility Act (RFA) and Executive Order 12866 Compliance) and summarized in the FRFA.

This rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 5, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

2. In § 679.2, the definition of ''Directed fishing'' is revised by removing paragraph (5) (Note: This removal supersedes the suspension of this paragraph published in the emergency interim rule at 67 FR 956, January 8, 2002).

3. In § 679.4, paragraph (k)(1)(i) is revised and paragraph (k)(9) is added to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(i) In addition to the permit and licensing requirements of this part, and except as provided in paragraph (k)(2) of this section, each vessel within the GOA or the BSAI must have an LLP groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in accordance with the specific area and species endorsements, the vessel and gear designations, and the MLOA specified on the license.

* * * * *

(9) *Pacific cod endorsements*—(i) *General.* In addition to other requirements of this part, and unless specifically exempted in paragraph (k)(9)(iv) of this section, a license holder must have a Pacific cod endorsement on his or her groundfish license to conduct directed fishing for Pacific cod with hook-and-line or pot gear in the BSAI. A license holder can only use the specific non-trawl gear(s) indicated on his or her license to conduct directed fishing for Pacific cod in the BSAI.

(ii) *Eligibility requirements for a Pacific cod endorsement.* This table provides eligibility requirements for Pacific cod endorsements on an LLP groundfish license:

If a license holder's license has a . . .	And the license holder harvested Pacific cod in the BSAI with . . .	Then the license holder must demonstrate that he or she harvested at least . . .	In . . .	To receive a Pacific cod endorsement that authorizes harvest with . . .
(A) Catcher vessel designation.	Hook-and-line gear or jig gear	7.5 mt of Pacific cod in the BSAI.	In any one of the years 1995, 1996, 1997, 1998, or 1999.	Hook-and-line gear.
(B) Catcher vessel designation.	Pot gear or jig gear	100,000 lb of Pacific cod in the BSAI.	In each of any two of the years 1995, 1996, 1997, 1998, or 1999.	Pot gear.
(C) Catcher/processor vessel designation.	Hook-and-line gear	270 mt of Pacific cod in the BSAI.	In any one of the years 1996, 1997, 1998, or 1999.	Hook-and-line gear.
(D) Catcher/processor vessel designation.	Pot gear	300,000 lb of Pacific cod in the BSAI.	In each of any two of the years 1995, 1996, 1997, or 1998.	Pot gear.

(iii) *Explanations for Pacific cod endorsements.* (A) All eligibility amounts in the table at paragraph (k)(9)(ii) of this section will be determined based on round weight equivalents.

(B) Discards will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(C) Pacific cod harvested for personal bait use will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(D) A legal landing of Pacific cod in the BSAI for commercial bait will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(E) Harvests within the BSAI will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section; however, a license holder will only be able to harvest Pacific cod in the specific areas in the BSAI for which he or she has an area endorsement.

(F) Harvests within the BSAI will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section only if those harvests were made from the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

(G) Except as provided in paragraph 679.4(k)(iii)(D), only harvests of BSAI Pacific cod in the directed fishery will count toward eligibility amounts.

(iv) *Exemptions to Pacific cod endorsements.* (A) Any vessel exempted from the License Limitation Program at paragraph (k)(2) of this section.

(B) Any catcher vessel less than 60 ft (18.3 m) LOA.

(C) Any catch of Pacific cod for personal use bait.

(v) *Combination of landings and hardship provision.* Notwithstanding the eligibility requirements in paragraph (k)(9)(ii) of this section, a license holder may be eligible for a Pacific cod endorsement by meeting the following criteria.

(A) *Combination of landings.* A license holder may combine the landings of a sunken vessel and the landings of a vessel obtained to replace a sunken vessel to satisfy the eligibility amounts in the table at paragraph (k)(9)(ii) of this section only if he or she meets the requirements in paragraphs (k)(9)(v)(A)(*1*)–(*4*) of this section. No other combination of landings will satisfy the eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(*1*) The sunken vessel was used as the basis of eligibility for the license holder's groundfish license;

(*2*) The sunken vessel sank after January 1, 1995;

(*3*) The vessel obtained to replace the sunken vessel was obtained by December 31 of the year 2 years after the sunken vessel sank; and

(*4*) The length of the vessel obtained to replace the sunken vessel does not exceed the MLOA specified on the license holder's groundfish license.

(B) *Hardship provision.* A license holder may be eligible for a Pacific cod endorsement because of unavoidable circumstances if he or she meets the requirements in paragraphs (k)(9)(v)(B)(*1*)–(*4*) of this section. For purposes of this hardship provision, the term license holder includes the person whose landings were used to meet the eligibility requirements for the license holder's groundfish license, if not the same person.

(*1*) The license holder at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in the table at paragraph (k)(9)(ii) of this section but that this intent was thwarted by a circumstance that was:

(*i*) Unavoidable;

(*ii*) Unique to the license holder, or unique to the vessel that was used as the basis of eligibility for the license holder's groundfish license; and

(*iii*) Unforeseen and reasonably unforeseeable to the license holder.

(*2*) The circumstance that prevented the license holder from conducting directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in paragraph (k)(9)(ii) actually occurred;

(*3*) The license holder took all reasonable steps to overcome the circumstance that prevented the license holder from conducting directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in paragraph (k)(9)(ii) of this section; and

(*4*) Any amount of Pacific cod was harvested in the BSAI aboard the vessel that was used as the basis of eligibility for the license holder's groundfish license after the vessel was prevented from participating by the unavoidable circumstance but before April 16, 2000.

* * * * *

4. In § 679.7, paragraph (d)(26) is removed and paragraphs (d)(11), (d)(16), (d)(23), and (f)(8) are revised to read as follows (Note: Revisions to paragraphs (d)(16) and (d)(23) and deletion of paragraph (d)(26) supersede the suspension of paragraphs (d)(16) and (d)(23) and the addition of paragraph (d)(26) published in the emergency interim rule at 67 FR 956, January 8, 2002):

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, discard any groundfish CDQ species or salmon PSQ before it is delivered to an eligible processor listed on an approved CDP unless discard of the groundfish CDQ is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

* * * * *

(16) Use any groundfish CDQ species as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

(23) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, discard sablefish harvested with fixed gear unless retention of sablefish is not authorized under 50 CFR 679.23(e)(4)(ii) or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

* * * * *

(f) * * *

(8) Discard:

(i) In the GOA:

(A) Rockfish that are taken when IFQ halibut or IFQ sablefish are on board unless rockfish are required to be discarded under subpart B of this part.

(B) Pacific cod that are taken when IFQ halibut or IFQ sablefish are on board unless Pacific cod are required to be discarded under subpart B of this part, or Pacific cod are not authorized to be retained under subpart A of this part.

(ii) In the BSAI:

(A) Rockfish that are taken when IFQ halibut or IFQ sablefish are on board unless rockfish are required to be discarded under subpart B of this part.

(B) Pacific cod that are taken when IFQ halibut or IFQ sablefish are on board according to the following table:

If the vessel operator . . .	Then . . .
(*1*) has an LLP groundfish license with a Pacific cod endorsement that meets the requirements of § 679.4(k)(9).	Pacific cod must not be discarded unless Pacific cod are required to be discarded under subpart B of this part, or Pacific cod are not authorized to be retained under subpart A of this part.
(*2*) does not have an LLP groundfish license with a Pacific cod endorsement that meets the requirements of § 679.4(k)(9).	Pacific code must not be discarded up to the retainable amount specified in Table 11 of this part unless Pacific cod are required to be discarded under subpart B of this part, or Pacific cod are not authorized to be retained under subpart A of this part.

(iii) In the waters within the State of Alaska:

(A) Rockfish that are taken when IFQ halibut or IFQ sablefish are on board unless rockfish are required to be discarded by the laws of the State of Alaska.

(B) Pacific cod that are taken when IFQ halibut or IFQ sablefish are on board unless Pacific cod are required to be discarded by the laws of the State of Alaska.

5. In § 679.20, paragraph (f)(4) is removed and paragraph (f)(2) is revised to read as follows (Note: Revision of paragraphs (f)(2) and removal of paragraph (f)(4) supersede the suspension of paragraph (f)(2) and the addition of paragraph (f)(4) published in the emergency interim rule at 67 FR 956, January 8, 2002):

§ 679.20 General limitations.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species. CDQ species may only be used to calculate retainable amounts of other CDQ species.

* * * * *

6. In § 679.32, the first sentence of paragraph (c)(1)(i), and paragraphs (c)(2)(i)(A), (c)(2)(ii)(A) and (f)(4) are revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) * * *

(i) Operators of catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. * * *

* * * * *

(2) * * *

(i) * * *

(A) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska;

* * * * *

(ii) * * *

(A) *Option 1: Retain all CDQ species.* Retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ or PSQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. Have all of the halibut PSQ counted by the CDQ observer and sampled for length or average weight; or

* * * * *

(f) * * *

(4) *Groundfish CDQ retention requirements.* Operators of vessels less than 60 ft (18.3 m) LOA are not required to retain and deliver groundfish CDQ species while halibut CDQ fishing, unless required to do so elsewhere in this part. Operators of vessels equal to or greater than 60 ft (18.3 m) LOA are required to comply with all groundfish CDQ and PSQ catch accounting requirements in paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if option 1 under § 679.32(c)(2)(ii) is selected in the CDP. CDQ species must be discarded when required by other provisions in subpart B of this part or, in waters within the State of Alaska, when discard is required by laws of the State of Alaska.

* * * * *

[FR Doc. 02–8961 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 67, No. 72
Monday, April 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–79–AD]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have superseded Airworthiness Directive (AD) 86–22–09 and would have applied to all Univair Aircraft Corporation Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes with the gascolator connected to the side of the carburetor. The earlier NPRM would have required you to replace any aluminum fuel line nipple with a brass or steel fuel line nipple, inspect for the existence of double support tubes on the gascolator, and install these tubes if they do not exist. Since issuance of the NPRM, we have determined that we should: supersede AD 46–38–03 and incorporate the actions of that AD into the proposed AD, require a one-time inspection of the fuel line fittings, incorporate revised service information into the AD, and reduce the compliance time. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 30, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–79–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2000–CE–79–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone: (303) 375–8882; facsimile: (303) 375–8888. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342–1083; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received.

Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–79–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What is the background of the subject matter? Reports of fuel leakage due to cracked fuel line nipples on Univair 415 series and Models F1 and F1A airplanes caused FAA to issue AD 86–22–09, Amendment 39–5457. This AD requires you to accomplish the following on Univair Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes:

—Inspect the fuel line nipple between the gascolator and the carburetor for cracks or misalignment; and
—Replace any suspect part.

These actions are specified in Univair Service Bulletin No. 24A, dated August 22, 1986.

The FAA has received reports of failure of the aluminum fuel line nipple, part number AN911–2D, on airplanes that were in compliance with AD 86–22–09. In one instance, a Model (ERCO) 415–C made an emergency landing because the failure led to engine fuel starvation.

AD 86–22–09 requires a one-time inspection of the part number AN911–2D fuel line nipple. Since 15 years have passed since issuance of that AD, most of the affected airplanes have had this inspection accomplished. If the fuel line nipple was not suspect at the time of inspection, then final AD compliance was obtained. In 15 years, cracks could develop in the aluminum fuel line nipple on these airplanes in compliance with AD 86–22–09.

In addition, Univair Service Bulletin No. 24A, dated August 22, 1986, also specifies replacing any aluminum fuel line nipple with a brass or steel fuel line nipple and installing double support tubes on the gascolator for those airplanes with a gascolator connected to

the side of the carburetor. AD 86–22–09 required the fuel line nipple replacement only if damage was found during the one-time inspection and did not require installation of the double support tubes.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in failure of the fuel line fittings or the gascolator because of the current airplane design configuration (aluminum fuel line nipples, aluminum fuel line elbows, and/or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Univair (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 4, 2001 (66 FR 50578). The NPRM proposed to supersede AD 86–22–09 with a new AD that would require you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor:

—Replace any aluminum fuel line nipple with a brass or steel fuel line nipple; and

—Inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist.

The proposed AD would not affect those airplanes with the gascolator mounted on the firewall.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Several ADs Already Address the Unsafe Condition

What is the commenter's concern? One commenter states that the proposed AD is unnecessary because the unsafe condition is already addressed in other AD actions and through manufacturer service memorandums and service bulletins. In particular, the commenter states that AD 86–22–09 requires replacement of the aluminum nipple because that is specified in Mandatory Service Bulletin 24A, dated August 22, 1986. The commenter further believes that AD 86–22–09 requires installation of the double support brackets because the installation is referenced in the service information. The commenter believes that FAA is proposing this AD to point out that owners and mechanics are not complying with existing ADs and service bulletins. The commenter recommends that we withdraw the NPRM.

What is FAA's response to the concern? We do not concur. AD 86–22–09 requires a one-time inspection of the aluminum AN911–2D fuel line nipples with replacement if necessary. After inspection or replacement, this AD requires no further action and, if the fuel line nipple was not found damaged, then the replacement was not required. We have received reports of failure of the aluminum fuel nipple on airplanes that are in compliance with AD 86–22–09. The only way we can mandate the actions of a manufacturer's service bulletin is through the issuance of an AD. Therefore, we are not withdrawing this NPRM.

After carefully reviewing all incident reports concerning this subject, we have also determined that we should add to the NPRM a requirement for a one-time visual inspection of the fuel line fittings between the carburetor and gascolator for cracks and misalignment (with any necessary replacement).

Since this addition to the NPRM increases the burden over that already proposed, we are issuing this action as a supplemental NPRM and reopening the comment period to allow the public the chance to comment.

Comment Issue No. 2: Include Actions To Address the Fuel Nipple and Elbow Between the Gascolator and Carburetor

What is the commenter's concern? Two commenters suggest that FAA address in the NPRM the areas of the fuel nipple and elbow between the gascolator and carburetor. This suggestion is based on service experience of both commenters' airplanes. Although one commenter recommends no specific action, we infer that this commenter wants us to consider the elbow when ensuring that no aluminum fuel line fittings are installed between the gascolator and carburetor.

What is FAA's response to the concern? We concur that the elbow and nipple aluminum fittings located in the area between the gascolator and carburetor are susceptible to the same failure and the proposed action should address both. AD 46–38–03 currently requires a one-time replacement of the aluminum elbow fittings for certain Univair (ERCO) 415–C, (ERCO) 415—CD, and (ERCO) 415–D airplanes. We have determined that the proposed action should supersede AD 46–38–03, should retain this one-time replacement for the above-referenced airplanes, and should extend the replacement to all airplanes affected by this proposed action.

Since this addition to the NPRM increases the burden over that already proposed, we are issuing this action as a supplemental NPRM and reopening the comment period to allow the public the chance to comment.

Comment Issue No. 3: Only Require Installation of Steel Fuel Line Elbows and Nipples

What is the commenter's concern? One commenter recommends that FAA only allow the installation of steel fuel line elbows and nipples. This commenter relates an experience where a brass elbow failed because brass does not have the same destruction resilience as steel under vibration conditions.

What is FAA's response to the concern? We do not concur. Although brass is softer than steel, FAA's analysis of the service history indicates that the installation of a brass fuel line elbow or nipple provides an acceptable level of safety when support tubes are installed and the fittings are properly aligned.

The support tube installation is proposed in this action and the proper alignment of the fittings is part of the installation procedures of the proposed AD.

Comment Issue No. 4: Require a Rubber Cushion Between the Adel Clamp and the Gascolator

What is the commenter's concern? One commenter communicates a problem with the rigid bracing at the far end of the gascolator. This commenter states that the only attach point for the entire assembly to the engine is the two studs that attach the spider manifold to the engine. This attachment is a shock mounting to the engine, which absorbs some vibration. The commenter states that, with this configuration, the gascolator at the end of the line is bound to have vibration, which is stopped by the rigid bracing. The commenter also states that the weak part of the gascolator system picks up this vibration load. The commenter recommends that FAA propose to require the installation of a rubber cushion between the adel clamp and the gascolator to absorb this vibration load.

What is FAA's response to the concern? We do not concur that a rubber cushion should be installed between the adel clamp and the gascolator on the affected airplanes. Our review of the service history of these airplanes indicates that the current configuration is an airworthy design.

We are not changing the proposed rule as a result of this comment.

Comment Issue No. 5: Reduce the Compliance Time to ''Prior to Further Flight''

What is the commenter's concern? One commenter wants FAA to revise the compliance time from 50 hours time-in-service (TIS) to prior to further flight. This commenter states that the affected airplanes are not airworthy without gascolator support tubes because the only support is aluminum fuel line fittings. The commenter further communicates the following:

—If a failure is a complete breakage of one of the aluminum fittings, the fuel will drain into the engine compartment from the fuselage tank;
—The fuel pump will continue to pump fuel from the wing tanks into the fuselage tank, which will continue to drain into the engine compartment until the engine quits;
—The engine will quit within seconds and give the pilot very little time to find a safe landing place;
—Up to six gallons of fuel could drain into the engine compartment if the pilot fails to remember to shut off the main fuel valve; and
—If an aluminum fuel line fitting cracks and leaks fuel, then this fuel or vapors could come too close to the hot exhausts and create a fire.

What is FAA's response to the concern? The FAA partially concurs. Things we consider in determining the type of action to take include the nature of the problem, the service history, the way the airplanes are used, and the logistics of having the action accomplished on the entire airplane fleet. Based on this, we have determined that we do not have justification for a ''prior to further flight'' compliance time. However, because a significant percentage of the affected airplanes are used for personal recreation and accumulate an average of 35 to 40 hours TIS per year, we are proposing a change in the compliance time from 50 hours TIS to 25 hours TIS.

Since this change to the NPRM increases the burden over that already proposed, we are issuing this action as a supplemental NPRM and reopening the comment period to allow the public the chance to comment.

Comment Issue No. 6: Reference a Later Revision of the Service Information

What is the commenter's concern? Since issuance of the NPRM, Univair has revised the service information (Univair Service Bulletin No. 24B, dated January 29, 2002) for this action. This service bulletin revision includes detailed instructions for installing and adjusting the gascolator support braces, includes proper brace numbers for all affected airplane models, and specifies the option of replacing the existing glass bowl gascolator with an all-metal gascolator. Univair requests that FAA incorporate this service bulletin into the proposed AD.

What is FAA's response to the concern? We will incorporate this service bulletin into the proposed AD. However, we will not reference the all-metal gascolator optional installation since it is not the subject matter of this proposed AD.

Comment Issue No. 7: Make the AD Apply to All Aluminum Fuel Line Nipples

What is the commenter's concern? One commenter requests that we remove reference to the part number of the aluminum fuel line nipple. The commenter states that any fuel line nipple made from aluminum should be replaced with an AN911–2 fitting made of steel or brass. The commenter states that removing this reference would ensure that no aluminum fittings are installed between the gascolator and the carburetor

What is FAA's response to the concern? We concur and will change the proposed AD accordingly.

The FAA's Determination

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that the NPRM should be expanded to include:

—A one-time inspection of the fuel line fittings;
—Replacement of the aluminum elbow fittings;
—The incorporation of Univair Service Bulletin No. 24B, dated January 29, 2002; and
—A change in the compliance time from 50 hours TIS to 25 hours TIS.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Proposing that the NPRM incorporate these additions and changes presents actions that go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

What are the provisions of the supplemental NPRM? The proposed AD would supersede AD 86–22–09 and AD 46–38–03 and would require you to:

—Replace any aluminum fuel line nipple with a brass or steel fuel line nipple;
—Replace any aluminum elbow fitting with a brass or steel elbow fitting;
—Inspect for the existence of double support tubes on the gascolator, and install these tubes if they do not exist; and
—Inspect the fuel line fittings between the carburetor and gascolator for cracks or misalignment and replace as necessary.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD would affect 2,500 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection, replacements, and installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120.	$70	$190 per airplane	$475,000

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 46–38–03 and AD 86–22–09, Amendment 39–5457, and by adding a new AD to read as follows:

UNIVAIR Aircraft Corporation: Docket No. 2000–CE–79–AD; Supersedes AD 46–38–03 and AD 86–22–09, Amendment 39–5457.

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes that:

(1) are certificated in any category; and

(2) have the gascolator connected to the side of the carburetor. This AD does not affect those airplanes with the gascolator mounted on the firewall.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the fuel line fittings or the gascolator because of the current airplane design configuration (aluminum fuel line nipples, aluminum fuel line elbows, and/or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the fuel line nipple and elbow located between the carburetor and gascolator for cracks or misalignment, and replace as necessary.	Inspect within the next 25 hours time-in-service (TIS) after the effective date of this AD and replace prior to further flight after the inspection. You must inspect even if you have inspected previously.	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(2) Replace any aluminum fuel line nipple with one made of brass or steel.	Within the next 25 TIS after the effective date of this AD, unless already accomplished (compliance with AD 86–22–09 and/or Univair Service Bulletin No. 24A, dated August 22, 1986).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(3) Replace any aluminum fuel elbow fitting with one made of brass or steel. Manufacturer replacement parts numbers are referenced in this service information.	Within the next 25 hours TIS after the effective date of this AD, unless already accomplished (compliance with AD 46–38–03).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(4) Inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist, as follows: (i) For all affected airplanes except for (Forney) F–1 and (Forney) F–1A airplanes, install part numbers 48076 and 48096 (or FAA-approved equivalent part numbers) double support tubes; and (ii) For all affected (Forney) F–1 and (Forney) F–1A airplanes, install part numbers 48098 and 48099 (or FAA-approved equivalent part numbers) double support tubes.	Inspect within the next 25 hours TIS after the effective date of this AD and install the double support tubes prior to further flight after the inspection, unless already accomplished (compliance with Univair Service Bulletin No. 24A, dated August 22, 1986).	In accordance with Univair Service Bulletin No. 24B, dated January 29, 2002.
(5) Do not install, on any affected airplane, an aluminum fuel line nipple or aluminum elbow.	As of the effective date of this AD	Not Applicable.
(6) Do not install a gascolator on the side of the carburetor on any affected airplane, unless the double support tubes specified in paragraph (d)(4)(i) or (d)(4)(ii) of this AD are installed.	As of the effective date of this AD	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Denver Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) Alternative methods of compliance approved in accordance with AD 46–38–03 and/or AD 86–22–09, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD,

regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Elizabeth Bumann, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342–1083; facsimile: (303) 342–1088.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 46–38–03 and AD 86–22–09, Amendment 39–5457.

Issued in Kansas City, Missouri, on April 5, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8989 Filed 4–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket # S–018]

RIN 1218–AB88

Safety Standards for Signs, Signals, and Barricades

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to amend construction industry standards to require that traffic control signs, signals, barricades or devices protecting construction workers conform to Part VI of the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1–1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD). This action is consistent with OSHA's June 16, 1999 interpretation letter stating that the agency would allow employers to comply with Revision 3 in lieu of the 1971 MUTCD.

Because OSHA believes the amendment is non-controversial, the Agency is issuing it as a Direct Final Rule published in the Final Rules section of today's **Federal Register**. If no significant adverse comment is received on the Direct Final Rule, OSHA will confirm the effective date of the Final Rule. If significant adverse comment is received, OSHA will withdraw the Direct Final Rule and proceed with rulemaking on this proposal. A subsequent **Federal Register** document will be published to announce OSHA's action.

DATES: Written comments and requests for a hearing on this proposed rule must be submitted or sent electronically by June 14, 2002.

ADDRESSES: Submit three copies of written comments to OSHA Docket Office, Docket No. S–018, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone (202–693–2350).

If written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office telephone number (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at *ecomments.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

How to obtain copies of the MUTCD: The 1988 Edition of the Manual on Uniform Traffic Control Devices (Revision 3, dated 9/93, with the November 1994 Errata No. 1 is available for downloading from OSHA's website: *http://www.osha.gov./doc/highway_workzones.* In addition, Revision 3 is available for viewing and copying at each OSHA Area Office. The Millennium Edition is available for downloading from DOT's website: *http://mutcd.fhwa.dot.gov/kno-millennium.* The Federal Highway Administration partnered with three organizations to print copies of the Millennium Edition Manual of Uniform Traffic Control Devices for sale. The organizations are: (1) American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406–1022; Telephone: 1–800–231–3475; FAX: (540) 368–1722; *www.atssa.com;* (2) Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005–3438; FAX: (202) 289–7722; ; *www.ite.org;* and (3) American Association of State Highway and Transportation Officials; *www.aashto.org;* Telephone: 1–800–231–3475; FAX: 1–800–525–5562.

FOR FURTHER INFORMATION CONTACT: Nancy Ford, Office of Construction Standards and Construction Services, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule applies to employers involved in road construction and repair operations. It addresses the types of signs, signals, and barricades that must be used in areas where road-work is being performed. A complete discussion of the changes noted in Revision 3 and the Millenium Edition, as well as an economic analysis, is published in the preamble to the Direct Final Rule. That discussion is incorporated in this proposal.

Public Participation

Interested persons are requested to submit written data, views, and arguments concerning this proposed rule. These comments must be received by June 14, 2002.

OSHA requests comments on all issues related to changing the references in the safety and health regulations for construction from the 1971 MUTCD to Revision 3 of the 1988 Edition (and, at the option of the employer, the Millennium Edition). OSHA also welcomes comments on the Agency's findings that there are no significant negative economic, environmental or

other regulatory impacts of this action on the regulated community. OSHA is not requesting comment on any issues or opening the record for any issue other than those related to this amendment to 29 CFR 1926.200, 201, and 1926.202.

Submit three copies of written comments to OSHA Docket Office, Docket No. S–018, Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone (202–693–2350).

If written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office telephone number (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at *ecomments.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

List of Subjects in 29 CFR Part 1926

Incorporation by reference, MUTCD, Occupational Safety and Health, Traffic control devices.

Authority and Signature

This document was prepared under the direction of John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000), and 29 CFR Part 1911.

Signed at Washington, DC, this 3rd day of April, 2002.

John Henshaw,

Assistant Secretary of Labor.

OSHA proposes to amend Subpart G of Title 29 of the Code of Federal Regulations as set forth below:

PART 1926—(AMENDED)

1. The authority citation for Subpart G of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 3–2000 (65 FR 50017) as applicable; 29 CFR Part 1911.

Subpart G [Proposed Amendments]

2. Paragraph (g)(2) of § 1926.200 is revised to read as follows:

§ 1926.200 Accident Prevention Signs and Tags

* * * * *

(g) * * *

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the Manual of Uniform Traffic Control Devices (''MUTCD''), 1988 Edition, Revision 3, September 3, 1993, FHWA–SA–94–027 or Part VI of the Manual on Uniform Traffic Control Devices, Millennium Edition, December 2000, FHWA, which are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the Millennium Edition from the following organizations: American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406–1022; Telephone: 1–800–231–3475; FAX: (540) 368–1722; *www.atssa.com;* Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005–3438; FAX: (202) 289–7722; *www.ite.org;* and American Association of State Highway and Transportation Officials; *www.aashto.org;* Telephone: 1–800–231–3475; FAX: 1–800–525–5562. Electronic copies of the MUTCD 2000 are available for downloading at *http://mutcd.fhwa.dot.gov/kno-millennium.* Electronic copies of the 1988 Edition MUTCD, Revision 3, are available for downloading at *http://www.osha.gov./doc/highway_workzones.* Both documents are available for inspection at the OSHA Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

3. Paragraph (a) of § 1926.201 is revised to read as follows:

§ 1926.201 Signaling.

(a) Flaggers. Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers shall conform to Part VI of the Manual on Uniform Traffic Control Devices, (1988 Edition, Revision 3 or the Millennium Edition), which are incorporated by reference in §1926.200(g)(2).

* * * * *

4. Section 1926.202 is revised to read as follows:

§ 1926.202 Barricades

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3 or Millennium Edition), which are incorporated by reference in § 1926.200(g)(2).

5. Paragraph (c) of § 1926.203 is revised to read as follows:

§ 1926.203 Definitions applicable to this subpart.

* * * * *

(c) *Signals* are moving signs, provided by workers, such as flaggers, or by devices, such as flashing lights, to warn of possible or existing hazards.

* * * * *

[FR Doc. 02–8774 Filed 4–12–02; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB08

NARA Facilities; Addresses and Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration proposes to amend its regulation that lists NARA facilities and hours when the public and other Federal agency staff may use the records in those facilities. This proposed rule includes corrections to email addresses for the Presidential libraries, corrections to phone and fax numbers, and in some cases, modifies the hours that these facilities are open for research. In addition, NARA is also proposing a uniform policy on research

room facility closings for Federal holidays in order to standardize them throughout NARA. This proposed rule affects members of the public who do research at NARA facilities.

DATES: Comments are due by June 14, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via email to *comments@nara.gov.* Please see the **SUPPLEMENTARY INFORMATION** section of the preamble for additional information on email submissions.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–713–7360, ext. 240, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: This proposed regulation includes information on several changes that have occurred since the last update to 36 CFR part 1253. Listings of Presidential libraries, records centers, and regional archives are revised to include corrected telephone and fax numbers, and research hours, and for Presidential libraries, email addresses.

NARA is also proposing a uniform policy on research room facility closings for Federal holidays that are on a Saturday. NARA has always closed its research room facilities on Federal holidays and this remains unchanged. However, NARA is proposing that when a Federal holiday occurs on a Saturday but the official observance is on the preceding Friday, the facility will close on the Saturday as well as the preceding Friday. Previously, closing the research room facilities on a Saturday when one of the Federal holidays occurred on that day, but was observed on the preceding Friday, was done on an ad hoc basis. The proposed policy standardizes the practice throughout NARA. The only dates that would be affected by the proposed policy are January 1st, the Fourth of July, Veteran's Day, and December 25th. These instances do not occur very often: In 2001 and 2002, there are no instances; in 2003, there is one instance on the Fourth of July; in 2004 there are two instances on December 25th and January 1st ; and in 2005 and 2006 there is one instance on Veteran's Day. This proposed policy applies to the research room facilities in the Washington, DC, area which are open Saturday and research rooms in some of the Presidential libraries and regional archives services facilities which may also be open on Saturday.

Please submit email comments within the body of your email message or attach comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 3095–AB08'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1253 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Amend § 1253.3 by revising paragraphs (a) through (j) to read as follows:

§ 1253.3 Presidential Libraries.

* * * * *

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: PO Box 488, West Branch, IA 52358–0488). The phone number is 319–643–5301 and the fax number is 319–643–5825. The email address is *hoover.library@nara.gov.*

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 845–229–8114 and the fax number is 845–229–0872. The email address is *roosevelt.library@nara.gov.*

(c) Harry S. Truman Library is located at 500 W. US Hwy 24, Independence, MO 64050–1798. The phone number is 816–833–1400 and the fax number is 816–833–4368. The email address is *truman.library@nara.gov.*

(d) Dwight D. Eisenhower Library is located at 200 SE Fourth Street, Abilene, KS 67410–2900. The phone number is 785–263–4751 and the fax number is 785–263–4218. The email address is *eisenhower.library@nara.gov.*

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 617–929–4500 and the fax number is 617–929–4538. The email address is *kennedy.library@nara.gov.*

(f) Lyndon Baines Johnson Library is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–916–5137 and the fax number is 512–916–5171. The email address is *johnson.library@nara.gov.*

(g) Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504–5353. The phone number is 616–451–9263 and the fax number is 616–451–9570. The email address is *ford.museum@nara.gov.* Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109–2114. The phone number is 734–741–2218 and the fax number is 734–741–2341. The email address is *ford.library@nara.gov.*

(h) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307–1498. The phone number is 404–331–3942 and the fax number is 404–730–2215. The email address is *carter.library@nara.gov.*

(i) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA 93065–0699. The phone number is 800–410–8354 or 805–522–8444 and the fax number is 805–522–9621. The email address is *reagan.library@nara.gov.*

(j) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–260–9554 and the fax number is 979–260–9557. The email address is *bush.library@nara.gov.*

3. Revise § 1253.5 to read as follows:

§ 1253.5 National Personnel Records Center.

(a) *Military Personnel Records.* NARA—National Personnel Records Center—Military Personnel Records is located at 9700 Page Ave., St. Louis, MO 63132–5100. The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday, except Federal holidays.

(b) *Civilian Personnel Records.* NARA—National Personnel Records Center—Civilian Personnel Records is located at 111 Winnebago St., St. Louis, MO 63118–4199. The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday, except Federal holidays.

4. Amend § 1253.6 by revising paragraphs (a) through (f), and (h) through (l) to read as follows:

§ 1253.6 Records Centers.

* * * * *

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours

are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8104.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 215–671–9027.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7474.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Rd., Dayton, OH 45439–1883. The hours are 7 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 937–225–2852.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 773–581–7816.

* * * * *

(h) NARA—Central Plains Region (Lee's Summit, MO) is located at 200 Space Center Drive, Lee's Summit, MO 64064–1182. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–823–6272.

(i) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX 76115–0216). The hours are 8 a.m. to 2:00 p.m., Monday through Friday. The telephone number is 817–334–5515.

(j) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 303–236–0804.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–876–9001.

(l) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–2626.

* * * * *

5. Amend § 1253.7 by revising paragraphs (b), (d), (g), (h), and (i) to read as follows:

§ 1253.7 Regional Archives.

* * * * *

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 413–445–6885.

* * * * *

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at 900 Market St. Philadelphia, PA 19107–4292. The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–597–3000.

* * * * *

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3060. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6920.

(h) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX, 76115–0216). The hours are 6:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5525.

(i) NARA—Rocky Mountain Region (Denver) Textual Research room is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. The Microfilm Research room is located at Building 46, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. (The mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0817.

* * * * *

6. Add § 1253.8 to read as follows:

§ 1253.8 Are NARA research room facilities closed on Federal holidays?

(a) NARA research room facilities are closed on all Federal holidays.

(b) When a Federal holiday is on a Saturday but the official observance is on the preceding Friday, the research rooms that are normally open on Saturday will be closed on the Saturday as well as the Friday.

Dated: April 5, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–9018 Filed 4–12–02; 8:45 am]

BILLING CODE 7515–01–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–1A]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of public roundtable.

SUMMARY: The United States Copyright Office announces a public roundtable discussion concerning issues raised in the course of an ongoing rulemaking proceeding to adopt requirements for giving copyright owners reasonable notice of the use of their works for sound recordings under the section 114 and 112 statutory licenses and for how records of such use shall be kept and made available to copyright owners. This document invites participation in the roundtable intended to elicit more specific information on areas identified in this document which are related solely to the subjects identified in the ongoing rulemaking and not to any other issue that may be part of a different proceeding.

DATES: The roundtable discussion will be held on Friday, May 10, 2002, beginning at 9 a.m. and continuing until 5 p.m. at the address listed below. Requests to participate or to attend the roundtable discussion must be submitted by close of business on Monday May 6, 2002.

ADDRESSES: The roundtable discussion will take place in LM620 (Dining Room A), James Madison Memorial Building, First and Independence Avenue, SE, Washington DC. Requests to participate or attend must be made by e-mail to *114roundtable@loc.gov* or by fax to (202) 252–3423. See **SUPPLEMENTARY INFORMATION** for other information regarding filing of the requests.

FOR FURTHER INFORMATION CONTACT: Questions about the meeting or the filing of such requests for participation or attendance should be addressed to either William J. Roberts Jr., or Susan N. Grimes at Telephone (202) 707–8380 or Telefax (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

The Digital Millennium Copyright Act (''DMCA''), Pub. L. No. 105–304, 112 Stat. 2860 (1998), amended the statutory license in section 114 of the Copyright Act for the public performance of sound

recordings via digital audio transmission, and established a new statutory license under section 112 of the Copyright Act for the making of ephemeral copies of sound recordings. The DMCA also directed the Copyright Office to establish regulations that require digital audio services eligible for the amended section 114 license and the new section 112 license to give copyright owners of sound recordings reasonable notice of the use of their works and to maintain records of use and make them available to copyright owners. See 17 U.S.C. 112(e)(4) and 114(f)(4)(A). On February 7, 2002, the Office published a Notice in the **Federal Register** proposing such regulations and sought public comment. Following publication of this notice, the Office extended the original comment period to April 5, 2002, and the reply period to April 26, 2002.

Roundtable Discussion

The Copyright Office has reviewed the comments received to this point and is aware that the proposed notice and recordkeeping provisions are contentious. It is our desire to adopt regulations that provide sufficient notification and information to copyright owners of the use of their sound recordings yet are not unduly burdensome on those making use of the statutory licenses. To promote the adoption of such regulations, the Office is holding a public roundtable discussion on May 10, 2002, to discuss the proposed regulations and the comments we have received. Those interested in participating in the roundtable must notify the Office in a written request sent by fax or e-mail to the addresses given above and this request must contain the following elements: (1) The name of the person desiring to participate, (2) the organization or organizations represented by that person, if any: (3) contact information (address, telephone, fax, and e-mail); and (4) information on the specific focus or intent of the participant (or his or her organization) and any questions or issues the participant would like to raise. Submission of such requests by regular mail will not be effective. While registration in a public forum would not otherwise be required, seating is limited and will be available first to persons who have submitted requests to participate or attend. Remaining seats will be available on a first-come, first-served basis. As discussed earlier, the Office is in the middle of an ongoing rulemaking proceeding and has already received initial comments; it will receive reply comments on April 26, 2002. No written comment is required as a prerequisite to participation. What is required is a request for participation that contains identified information. Persons desiring merely to attend but not actively participate in the discussions should so indicate in the request and need not give any information on questions or issues.

The Copyright Office encourages participation by all those affected by the proposed regulations. The Office is especially interested in the views of small businesses engaged in webcasting as well as individuals and small businesses who are copyright owners of sound recordings, and in details relating to the benefits, costs and burdens associated with the published notice and recordkeeping proposal and of alternatives to that proposal. The Office encourages those who would like to participate to review the comments already submitted in this proceeding. Those comments may be found on our website at *http://www.loc.gov/copyright/carp/114/comments.html.* The Office also encourages those with common interests and views to select one spokesperson.

Dated: April 11, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 02–9207 Filed 4–12–02; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[IL207–1b; FRL–7160–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve new emissions tests averaging provisions for the state of Illinois. The Illinois Environmental Protection Agency (IEPA) submitted the provisions on October 9, 2001 as a requested revision to the Illinois State Implementation Plan (SIP). The new provisions provide that when conducting a compliance test, a source is considered in compliance with the relevant standard if the average of 3 emissions test runs is at or below the level specified in the emissions standard.

DATES: EPA must receive written comments on this proposed rule by May 15, 2002.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Acientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean EPA.

Table of Contents

I. What action Is EPA Taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We are proposing to approve new emissions tests averaging provisions for the state of Illinois. The IEPA submitted the provisions on October 9, 2001 as a requested revision to the Illinois SIP. The new provisions provide that when conducting a compliance test, a source is considered in compliance with the relevant standard if the average of 3 emissions test runs is at or below the level specified in the emissions standard.

The emissions tests averaging provisions only apply to units that produce a consistent pattern of emissions. The emissions tests averaging provisions may not be used for determining the compliance status of emissions units that are subject to Sections 111 (Standards of Performance for New Stationary Sources) and 112 (Hazardous Air Pollutants) of the Clean Air Act or for units that are being tested for emissions generated by hazardous waste or municipal waste.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: March 7, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–8949 Filed 4–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0019; FRL–6834–1]

RIN 2070–AB17

Acephate, Amitraz, Carbaryl, Chlorpyrifos, Cryolite, et al.; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke certain tolerances for residues of the pesticides acephate, amitraz, carbaryl, chlorpyrifos, cryolite, disulfoton, ethalfluralin, ethion, ethoprop, fenthion, fluvalinate, methamidophos, metribuzin, oxamyl, phorate, phosalone, phosmet, pirimiphos-methyl, profenofos, propiconazole, tetrachlorvinphos, thiram, and tribufos because these specific tolerances are either no longer needed or are associated with food uses that are no longer current or registered in the United States. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the proposed revocation of 153 tolerances. Because seven tolerances were previously reassessed, 146 tolerances would be counted as reassessed. Also, EPA is announcing that six goat and sheep tolerances at 0 ppm for amitraz are considered to be reassessed. Therefore, a total of 152 tolerance reassessments would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: Comments, identified by docket control number OPP–2002–0019, must be received on or before June 14, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0019 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations, '' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0019. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002-0019 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0019. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke certain tolerances for residues of the pesticides acephate, amitraz, carbaryl, chlorpyrifos, cryolite, disulfoton, ethalfluralin, ethion, ethoprop, fenthion, fluvalinate, methamidophos, metribuzin, oxamyl, phorate, phosalone, phosmet, pirimiphos-methyl, profenofos, propiconazole, tetrachlorvinphos, thiram, and tribufos because these specific tolerances correspond to uses no longer current or registered under FIFRA in the United States. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. Also, some of the proposed revocations in this document are in accordance with the recommendations made during the Reregistration Eligibility Decision (RED), Interim Reregistration Eligibility Decision (IRED), or Report on FQPA Tolerance Reassessment Progress (TRED) process and for which documents are available in the OPP Public Regulatory Docket under the appropriate control number. Also, RED, IRED, or TRED documents are available as described in Unit II.B.

In addition, EPA plans to update tolerance commodity terminology to conform to current Agency practice and expects to revise commodity terminology for all tolerances found within 40 CFR Part 180 in other future **Federal Register** publications, the first of which may be published soon after this proposed rule. Therefore, some or all of the commodity terminology revisions described in this proposed rule may be addressed in the **Federal Register** before a final rule for this proposal is published in the **Federal Register**.

1. *Acephate.* On September 28, 2001, EPA issued an IRED for acephate which recommended that certain tolerances should be revoked (docket control numbers OPP–34164 and OPP–34164B). Previously, on April 17, 1998 (63 FR 19254) (FRL–5782–6), July 8, 1998 (63 FR 36897) (FRL–5797–1), July 22, 1998 (63 FR 39287) (FRL–5799–9), and January 27, 1999 (64 FR 4099) (FRL–6051–8), EPA published notices in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from registrants to cancel or amend certain product registrations and delete certain acephate uses, including the grass pasture and rangeland use for acephate. EPA approved the registrants' requests for voluntary cancellation of those specific product registrations and deletion of certain uses, including the use for grass (pasture and rangeland), and allowed a period of 18 months (in the 1998 notices) and 12 months (in the 1999 notice) for registrants to sell and distribute those specific existing stocks affected. The Agency believes that end users had sufficient time (at least 18 months beyond the endpoint for sale and distribution by registrants) to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.108 for combined residues of acephate and its cholinesterase-inhibiting metabolite O,S-dimethylphosphura-midothioate in or

on grass (pasture and range) and grass hay because no active registrations exist which cover those commodities.

2. *Amitraz*. Prior to enactment of the FQPA in August 1996, EPA issued a RED for amitraz, approved in March 1995, which identified uses not being supported and recommended revocation of the tolerances for apples; horses, fat; horses, mbyp; and horses, meat. Apple and horse commodity tolerances are currently codified in 40 CFR 180.287 at 0 ppm; i.e., no finite tolerance is established for apple and horse commodities for amitraz. There is currently no registered use of amitraz on apples or horse commodities and those commodities are not identified as registered uses for amitraz in the 1995 RED or in the Product and Residue Chemistry Chapter, completed on September 17, 1993. The historical regulatory file for amitraz does not show any registered products that were associated with either apple or horse commodity uses; i.e., no product cancellations or use deletions from labels were completed or need to be completed. Because the tolerances are no longer needed, the Agency is proposing to revoke the tolerances in 40 CFR 180.287 for residues of amitraz and its metabolites in or on apples; horses, fat; horses, mbyp; and horses, meat. EPA believes that sufficient time has passed for the possiblity of any stocks to have been exhausted and for the possibility of any treated commodities to have cleared channels of trade.

Also, according to the 1993 Product and Residue Chemistry Chapter and 1995 RED, the Agency had received a petition to accommodate dermal use of amitraz that was pending in regard to revision in the levels of established goat and sheep tolerances at 0 ppm in 40 CFR 180.287. Currently, those six tolerances for goats, fat; goats, mbyp; goats, meat; sheep, fat; sheep, mbyp; and sheep, meat are at 0 ppm. EPA has been able to identify no past or current registrations of amitraz for use on goat or sheep commodities. However, due to the pending petition, EPA is not proposing revocation of those six tolerances at this time. EPA believes that there is no risk of exposure to amitraz under these tolerances because the tolerance permits no amount of the pesticide chemical to remain on the raw agricultural commodity when it is offered for shipment; and therefore, the tolerances present a reasonable certainty of no harm to human health. In accordance with FQPA, the Agency considers those six goat and sheep tolerances at 0 ppm to be reassessed.

In addition, the Agency is proposing to revise commodity terminology in 40 CFR 180.287 to conform to current Agency practice as follows: ''beeswax'' to ''honeycomb'' and ''hops, dried'' to ''hop, dried cones.

33. *Carbaryl*. In the U.S., there are no current uses of the insecticide carbaryl in or on cotton, forage; barley; oats; or rye. The Agency approved the registrant's requests for voluntary amendment of various carbaryl product labels to delete use on oats and rye in 1996, barley in 1997, and cotton forage in 1999. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.169 for residues of carbaryl, including its hydrolysis product 1-naphthol, calculated as 1-naphthyl N-methylcarbamate in or on barley, grain; barley, green fodder; barley, straw; cotton, forage; oats, fodder, green; oats, grain; oats, straw; rye, fodder, green; rye, grain; and rye, straw. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

4. *Chlorpyrifos*. Because beans, lima, forage; beans, snap, forage; sorghum milling fractions (sorghum flour is used exclusively in the U.S. as a component for drywall, not as either a human or animal feed item); bean, forage; and pea forage are no longer considered to be significant feed items; the tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.342(a)(1) for beans, lima, forage; beans, snap, forage; and sorghum milling fractions and in 40 CFR 180.342(a)(2) for bean, forage and pea forage.

On September 28, 2001, EPA issued an IRED for chlorpyrifos which recommended that certain tolerances should be revoked (docket control numbers OPP–34203 and OPP–34203C). In response to the chlorpyrifos IRED, the Interregional Research Project No. 4 (IR-4) Center for Minor Crop Pest Management notified the Agency that they are supporting and developing data for chlorpyrifos tolerances for blueberries in 40 CFR 180.342(a)(1), leeks in 40 CFR 180.342(c)(1), and cherimoya, feijoa (pineapple guava), and sapote in 40 CFR 180.342(c)(2). Therefore, those tolerances will not be proposed for revocation at this time.

The historical regulatory file for chlorpyrifos does not identify registered products that were associated with uses on caneberries, dates, mushrooms, seed and pod vegetables, and sugarcane; i.e., no product cancellations or use deletions from labels need to be completed. EPA believes these uses were canceled years ago and sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared the channels of trade. Because there are currently no current registered uses for combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol on dates, mushrooms, and seed and pod vegetables; and for residues of chlorpyrifos on caneberries and sugarcane, EPA is proposing to revoke the tolerances for mushrooms and seed and pod vegetables in 40 CFR 180.342(a)(1), caneberries and sugarcane in 40 CFR 180.342(a)(2), and dates in 180.342(c)(1).

In addition, the Agency is proposing to revise commodity terminology to conform to current Agency practice as follows: in 40 CFR 180.342(a)(1) ''beans, lima'' to ''bean, lima'' ''beans, snap'' to ''bean, snap, succulent''; ''beets, sugar, molasses'' to ''beet, sugar, molasses''; ''onions (dry bulb)'' to ''onion, dry bulb''; ''peppers'' to ''pepper,'' ''sorghum, fodder'' to ''sorghum, grain, stover,'' ''sorghum, grain'' to ''sorghum, grain, grain''; ''sunflower, seeds'' to ''sunflower, seed''; in 40 CFR 180.342(a)(2) ''nectarines'' to ''nectarine''; ''peaches'' to ''peach''; ''strawberries'' to ''strawberry''; ''sweet potatoes'' to ''sweet potato''; and in 40 CFR 180.342(c)(1) ''grapes'' to ''grape''; and ''leeks'' to ''leek.''

5. *Cryolite*. The registrant(s) of cryolite requested voluntary cancellation for use on beets, radishes, rutabagas, and turnips. Rutabagas were removed from cryolite labels prior to 1988. Beets were removed from cryolite labels in 1988. Radishes and turnips were removed from cryolite labels in 1996. In June 1996, the cryolite RED recommended that the tolerances for beets, roots; radish, roots, rutabaga, roots; and turnip, roots be revoked because the registrant intended to request voluntary cancellation. On September 25, 1996 (61 FR 50294) (FRL–5394–2), a FIFRA section 6(f)(1) notice of receipt of a request to voluntarily delete radish and turnip uses from cryolite registrations was published in the **Federal Register**, with a use deletion date of December 24, 1996. Accordingly, the Agency is proposing to revoke tolerances in 40 CFR 180.145 for residues of fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on beets, roots; radish, roots; rutabaga, roots; and turnip, roots. EPA believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared the channels of trade.

6. *Disulfoton*. On June 4, 1997 (62 FR 30578) (FRL–5715–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its

receipt of requests for amendments to delete disulfoton uses for pineapples, rice, and sugar beets. EPA approved the request, effective December 1, 1997, and allowed the registrants to sell or distribute products under the previously approved labeling for 18 months (June 1, 1999). More than 2½ years has passed, which the Agency believes to be sufficient time for exhaustion of those stocks and for treated commodities to have cleared channels of trade. Because no active registrations exist for use of disulfoton in or on those commodities, EPA is proposing to revoke the tolerances in 40 CFR 180.183(a)(1) for residues of disulfoton and its cholinesterase-inhibiting metabolites in or on beets, sugar, roots; beets, sugar, tops; pineapples; rice; and rice, straw; and the tolerances in 40 CFR 180.183(a)(2) for residues of disulfoton, calculated as demeton, in dehydrated sugar beet pulp and in pineapple bran.

The commodity ''beans, vines'' is no longer considered to be a significant animal feed item and the tolerance is no longer needed. Therefore, EPA is proposing to revoke the tolerance for beans, vines in 40 CFR 180.183.

On February 7, 2001 (66 FR 9317) (FRL–6765–9), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete disulfoton uses for corn, oats, and pecans. EPA approved the request, effective March 9, 2001, and allowed the registrants to sell or distribute product under the previously approved labeling for 18 months (ending September 9, 2002). EPA believes that those stocks should be exhausted within 12 months of that date (September 9, 2003). Because no active registrations exist for the use of disulfoton in or on those commodities, EPA is proposing to revoke the tolerances in 40 CFR 180.183(a)(1) for the combined residues of disulfoton and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on corn, field, fodder; corn, field, forage; corn, grain; corn, pop; corn, pop, fodder; corn, pop, forage; corn, sweet, fodder; corn, sweet, forage; corn, sweet, grain (K+CWHR); oats, fodder, green; oats, grain; oats, straw; and pecans with an expiration, revocation date of December 9, 2003. The Agency believes that this revocation date permits users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade.

In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.183(a) to conform to current Agency practice as follows: ''beans, dry'' to ''bean, dry;'' ''beans, lima'' to ''bean, lima''; ''coffee beans'' to ''coffee, bean''; ''corn, field, fodder'' to ''corn, field, stover''; ''corn, pop, fodder'' to ''corn, pop, stover''; ''corn, sweet, fodder'' to ''corn, sweet, stover''; ''cottonseed'' to ''cotton, undelinted seed''; ''hops'' to ''hop, dried cones''; ''oats, grain'' to ''oat, grain''; ''oats, straw'' to ''oat, straw''; ''peanuts'' to ''peanut''; ''peas'' to ''pea''; ''peas, vines'' to ''pea, field, vines''; ''pecans'' to ''pecan''; ''peppers'' to ''pepper''; ''potatoes'' to ''potato''; ''sorghum, fodder'' to ''sorghum, grain, stover''; ''sorghum, forage'' to ''sorghum, forage, forage;'' ''sorghum, grain'' to ''sorghum, grain, grain''; ''soybeans'' to ''soybean''; ''soybeans, forage'' to ''soybean, forage''; ''soybeans, hay'' to ''soybean, hay''; ''tomatoes'' to ''tomato''; and ''wheat, fodder, green'' to ''wheat, hay.''

7. *Ethalfluralin*. When EPA establishes tolerances for residues in or on raw agricultural commodities, consideration must be given to the possible residues of those pesticides in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that: (1) Finite residues will exist in meat, milk, poultry, and/or eggs; (2) there is a reasonable expectation that finite residues will exist; or (3) there is a reasonable expectation that finite residues will not exist. In 1994, the ethalfluralin RED recommended revocation for egg, milk, fat, meat, and meat byproduct tolerances based on animal metabolism data (submitted since the time that the tolerances were originally established) from which EPA concluded that there is no reasonable expectation of finite residues for meat, fat, and meat byproduct commodities and the associated tolerances are not required according to 40 CFR 180.6(a)(3). Those feeding studies used exaggerated amounts of the pesticide and did not show measurable residues in animal tissues. Since the ethalfluralin RED, completed prior to the implementation of the FQPA, the Agency has reviewed the regulatory conclusions in the RED and determined in a memorandum January 3, 2002, that for egg, milk, fat, meat, and meat byproduct commodities there is no reasonable expectation of finite residues and the egg, milk, fat, meat, and meat byproduct tolerances for ethalfluralin are no longer needed and are not required according to 40 CFR 180.6(a)(3). Therefore, the Agency is proposing to revoke the tolerances in 40 CFR 180.416 for residues of ethalfluralin in or on goats, fat; goats, meat; and goats, mbyp. A copy of the Agency's January 3, 2002 memorandum will be placed in the docket.

8. *Ethion*. On January 14, 1998 (63 FR 2163) (FRL–5755–9), EPA consolidated certain food and feed additive tolerance regulations in 40 CFR parts 185 and 186 to part 180, including the raisins and tea, dried tolerances for ethion from 40 CFR 185.2750 into 40 CFR 180.173. On February 5, 1998 (63 FR 5907) (FRL–5743–9), the Agency proposed to revoke the tolerances for raisins and tea, dried in 40 CFR 180.173. The Agency did not receive any comment on the proposed revocation of these two tolerances. However, on October 26, 1998 (63 FR 57067) (FRL–6035–6), EPA published a final rule in the **Federal Register** which inadvertently did not remove the raisins and tea, dried tolerances from the table of entries found in 40 CFR 180.173. To correct the error, the Agency now is proposing to revoke the tolerance for raisins and tea, dried in 40 CFR 180.173 with an effective date that is 90 days after publication of a final rule in the **Federal Register**.

On August 24, 29, and 31, 2001, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, respectively, signed a Memorandum of Agreement with EPA requesting voluntary cancellation of all their registrations for products containing ethion. On September 26, 2001 (66 FR 49182) (FRL–6805–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests for registration cancellations. On March 22, 2002 (67 FR 13327) (FRL–6829–5), EPA published a cancellation order in the **Federal Register** which approved the registrants' requests for voluntary cancellation of ethion registrations. As a result of the voluntary cancellation, the Agency is prohibiting sale and distribution of existing stocks of ethion manufacturing use products after October 1, 2003, and is prohibiting the production of any product after December 31, 2003. Also, the Agency is prohibiting the sale and distribution of end-use products after October 1, 2004, and is prohibiting the use of end-use products after December 31, 2004. Therefore, with the exception of the tolerances for raisins and dried tea, described in the preceding paragraph, the Agency is proposing to revoke all tolerances in 40 CFR 180.173 for residues of ethion including its oxygen analog (S-[[diethoxyphosphinothioyl)thio]methyl] O,O-diethyl phosphorothioate) with an expiration/revocation date of March 31, 2005. The Agency believes that this date allows sufficient time for any ethion-

treated food commodities to pass through the channels of trade.

9. *Ethoprop*. A regional tolerance was established in 1987 for ethoprop use on okra. However, EPA's report on Quantitative Usage Analysis for ethoprop shows the usage status on okra as not available or insufficient for quantitation between 1987 and 1996. There is currently no registered use of ethoprop on okra. EPA has been able to identify no past registration of ethoprop for use on okra and believes that the use was canceled years ago. Therefore, EPA is proposing to revoke the tolerance for okra in 40 CFR 180.262(c). The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared the channels of trade.

10. *Fenthion*. In the IRED for fenthion issued in December 2000, EPA published its interim decision on tolerance reassessment for fenthion (docket control number OPP–34145). The IRED addressed risks from exposure to fenthion-treated livestock food items. However, the registrant requested voluntary cancellation of all of the food-use product registrations for fenthion. On October 16, 2000 (65 FR 61161) (FRL–6747–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of these requests. The Agency approved the registrants' requests for a phased voluntary cancellation of fenthion registrations. In accordance with the IRED, the cancellation of products associated with the swine use had a cancellation date of October 2000 and permitted the registrant to sell and distribute existing stocks until October 2001. The products associated with cattle use had a cancellation date of December 31, 2000 and permitted the registrant to sell and distribute existing stocks until December 31, 2001. The Agency believes that end users will exhaust existing stocks of fenthion by December 31, 2002. EPA is proposing to revoke the tolerances in 40 CFR 180.214 for residues of fenthion and its cholinesterase-inhibiting metabolites in or on cattle, fat; cattle, meat; cattle (mbyp); hogs, fat; hogs, meat; hogs (mbyp); and milk with an expiration/revocation date of April 1, 2003 to allow sufficient time for treated commodities to pass through channels of trade. Also, EPA is proposing to revise commodity terminology in 40 CFR 180.214 to conform to current Agency practice as follows: ''cattle (mbyp)'' to ''cattle, meat byproducts''; ''hogs, fat'' to ''hog, fat''; ''hogs, meat'' to ''hog, meat''; and ''hogs (mbyp)'' to ''hog, meat byproducts.

111. *Fluvalinate*. With the exception of honey, which is linked to the active registration for use in/on beehives, there are no active food-use registrations for the insecticide fluvalinate. The use of fluvalinate on cotton was voluntarily canceled in 1991. Cotton had been the only feed use for fluvalinate; therefore, the animal commodity tolerances are no longer needed. EPA believes that sufficient time has passed for exhaustion of those stocks and for treated commodities to have cleared channels of trade. Therefore, with the exception of honey, EPA is proposing to revoke the tolerances in 40 CFR 180.427(a) for residues of fluvalinate in or on cattle, fat; cattle, mbyp; cattle, meat; cottonseed; cottonseed hulls; cottonseed oil (crude and refined); eggs; goat, fat; goat, mbyp; goat, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat.

Also, a tolerance for coffee was established in 1989 based on a FIFRA section 24(c) registration and use of fluvalinate on coffee was restricted to Hawaii. In May 1990, the registration was canceled. Therefore, the Agency is proposing to revoke the tolerance in 40 CFR 180.427(c) for residues of fluvalinate in or on coffee.

12. *Methamidophos*. On July 2, 1997 (62 FR 35812) (FRL–5724–7), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrants to terminate the use of methamidophos on all crops except cotton and potatoes, and to cancel all methamidophos 24(c) food-use registrations not labeled for use on tomatoes only, and provided a period for public comment. On December 23, 1997 (62 FR 67071) (FRL–5764–2), EPA published a notice in which the Agency responded to comments received and approved those terminations and cancellations, effective December 31, 1997. The Agency determined that after December 31, 1997, only persons other than the registrants were allowed to sell and distribute existing stocks, which EPA believed at that time to be relatively small. More than 4 years has passed, which the Agency believes to be sufficient time for exhaustion of those stocks and for treated commodities to have cleared channels of trade. EPA now proposes to revoke the tolerances in 40 CFR 180.315(a) for residues of methamidophos in or on beets, sugar, roots; beets, sugar, tops; broccoli; Brussels sprouts; cabbage; cauliflower; and lettuce. Because a petition submitted by the registrant to the Agency for use on peppers regarding a FIFRA section 24(c) registration is pending and because of the possibility that existing labels for 24(c) registrations may not yet have been amended regarding deletion of cucumbers, eggplant, and melons, the Agency will not address cucumbers, eggplant, melons, and peppers at this time. However, EPA is proposing to revise commodity terminology in 40 CFR 180.315 to conform to current Agency practice as follows: ''cucumbers'' to ''cucumber''; ''melons'' to ''melon''; and ''peppers'' to ''pepper.'' In addition, the Agency is proposing in 40 CFR 180.315 to revise ''cottonseed'' to ''cotton, undelinted seed''; ''potatoes'' to ''potato'' and ''tomatoes'' to ''tomato.''

13. *Metribuzin*. The Agency is proposing to revoke the tolerance in 40 CFR 180.332 for residues of metribuzin and its triazinone metabolites in or on potato waste, processed (dried). Because potato waste, processed (dried) is no longer considered a significant feed item, the tolerance is no longer needed. EPA issued a RED for metribuzin, approved on May 20, 1997, but the potato waste, processed (dried) tolerance was since identified not to be a significant feed item.

14. *Oxamyl*. Because peanut, forage; pineapples, forage; and soybean straw commodities are no longer considered to be significant feed items, the associated tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.303 for the sum of the residues of the insecticide oxamyl (methylN-N-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N,N-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on peanut, forage; pineapples, forage; and soybean straw. These proposed revocations are consistent with recommendations found in the IRED for oxamyl issued on September 30, 2000 (docket control numbers OPP–34230 and OPP–34236).

15. *Phorate*. Because these commodities are no longer considered significant livestock feed items and therefore the associated tolerances are no longer needed, EPA is proposing to revoke the tolerances in 40 CFR 180.206 for combined residues of phorate and its cholinesterase-inhibiting metabolites in or on beans, vines and peanuts, vines.

In FY 2000, EPA published an IRED for phorate which recommended that certain tolerances, including the tolerances for peanut hay and dried sugar beet pulp, should be revoked (docket control numbers OPP–34137 and OPP–34137B). Because a feeding restriction exists against the feeding of treated peanut hay on current product labels, the tolerance is no longer

needed, and therefore the Agency is proposing to revoke the tolerance in 40 CFR 180.206 for peanuts, hay. In addition, sufficient sugar beet processing data are available that indicate phorate residues of concern do not concentrate in dried sugar beet pulp. Therefore, that tolerance is no longer needed and EPA is proposing to revoke the tolerance in 40 CFR 180.206 for sugar beet, dried pulp.

16. *Phosalone*. In 1986, 1987, and 1991, registrations for phosalone use on almonds were canceled. In response to a proposal by the Agency (63 FR 3057, January 21, 1998) (FRL–5743–8) to revoke plant and animal commodity tolerances for phosalone, the registrant requested that the Agency not revoke certain tolerances, including almonds, for importation purposes only. On January 22, 1999 (64 FR 3427) (FRL–6044–2), a correction of the final rule (63 FR 57062, October 26, 1998) (FRL–6035–8) was published in the **Federal Register** and announced that EPA had revoked the tolerance for ''nuts,'' but since almonds had been covered by that tolerance, the Agency would establish a tolerance for almonds. However, the tolerance for ''almond, hulls'' is not needed for import purposes. In January 2001, EPA published a TRED and Interim Risk Management Decision for phosalone which recommended that the tolerance for almond hulls, a livestock feed item, be revoked because phosalone has no U.S. registrations and almond hulls are not imported, nor do countries with registered uses for phosalone on almonds export significant quantities of livestock commodities to the U.S. (docket control numbers OPP–34216 and OPP–34216A). To implement that recommendation found in the IRED, EPA is proposing to revoke the tolerance in 40 CFR 180.263 for residues of phosalone in or on almond, hulls.

17. *Phosmet*. On October 30, 2001 EPA issued an IRED for phosmet which recommended that certain tolerances should be revoked (docket control numbers OPP–34173 and OPP–34173B). Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.261 for the sum of the residues for N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorothioate) in or on corn, fresh (inc. sweet K+CWHR); corn, fodder; corn, forage; and corn, grain because no active registrations exist which cover those commodities. Previously, on April 17, 1996 (61 FR 16779) (FRL–5360–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrant to delete certain product label uses, including the corn use for phosmet. EPA approved the registrant's request for an amendment to delete the corn use from its label effective July 16, 1996, and allowed the registrant to sell and distribute affected existing stocks for 18 months; i.e., until January 16, 1998. EPA believes that end users have now had sufficient time (more than 4 years) to exhaust those stocks and for treated commodities to have cleared channels of trade.

18. *Pirimiphos-methyl*. In 2001, EPA published an IRED for pirimiphos-methyl which recommended that certain tolerances should be revoked (docket control numbers OPP–34168, OPP–34168A, and OPP–34168B). Results from ruminant and poultry feeding studies (and residue trials conducted on stored grains) indicated that residues in certain livestock commodities could be classified under 40 CFR 180.6(a)(3); i.e., there is no reasonable expectation of finite residues. Therefore, the tolerances are no longer needed. Accordingly, the Agency is proposing to revoke the tolerances in 40 CFR 180.409(a)(1) for combined residues of pirimiphos-methyl, O-[2-diethylamino-6-methyl-4-pyrimidinyl) O,O-dimethyl phosphorothioate, the metabolite O-[2-ethylamino-6-methyl-pyrimidin-4-yl) O,O-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol), 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on cattle, meat; eggs; goats, meat; hogs, meat; horses, meat; milk, fat (0.1 ppm (N) in whole milk); poultry, mbyp; poultry, meat; and sheep, meat.

Also, processing studies indicated that residues did not concentrate in either refined corn oil or in the milling fractions of corn and sorghum. Therefore, the Agency is proposing to revoke the tolerances in 40 CFR 180.409(a)(2) for corn milling fractions (except flour); corn oil; and sorghum milling fractions (except flour). For reassessment counting purposes, the tolerances for both corn and sorghum milling fractions will each count as two to reflect the two tolerances (formerly in 40 CFR 185.4950 and 186.4950) that had existed on August 3, 1996, when FQPA was enacted.

In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.409 to conform to current Agency practice as follows: ''cattle, mbyp'' to ''cattle, meat byproducts''; ''goats, fat'' to ''goat, fat''; ''goats, mbyp'' to ''goat, meat byproducts''; ''hogs, fat'' to ''hog, fat''; ''hogs, mbyp'' to ''hog, meat byproducts''; ''horses, fat'' to ''horse, fat''; ''horses, mbyp'' to ''horse, meat byproducts''; ''sheep, mbyp'' to ''sheep, meat byproducts''; and ''sorghum, grain'' to ''sorghum, grain, grain.''

19. *Profenofos*. In August 2000, EPA published an IRED for profenofos which recommended that certain tolerances should be revoked (docket control numbers OPP–34138 and OPP–34138B). EPA concluded that there is no reasonable expectation of finite residues for hog commodities (meat, fat, and meat byproducts) for profenofos based on feeding studies. The associated tolerances are not required according to 40 CFR 180.6(a)(3) and can be revoked. Therefore, the Agency is proposing to revoke the tolerances in 40 CFR 180.404 for hogs, fat; hogs, mbyp; and hogs, meat.

Also, EPA is proposing to revoke the tolerance in 40 CFR 180.404 for cottonseed hulls because the tolerance is no longer needed, based on a cottonseed processing study for cottonseed treated with profenofos. The data show that after application of an average concentration factor of 1.4X for cottonseed hulls to the highest average field trial value, the expected average level of profenofos per se, the compound of toxicological concern, is covered by the current tolerance for the raw agricultural commodity, cottonseed, at 3.0 ppm (as well as the interim reassessed tolerance for cottonseed at 2.0 ppm).

20. *Propiconazole*. EPA is proposing to revoke the tolerance in 40 CFR 180.434 for grass, seed screenings because that commodity is no longer considered a significant feed item and therefore the tolerance is no longer needed. Also, because a tolerance for stonefruit group at 1.0 ppm already exists for the combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid (expressed as parent compound) in 40 CFR 180.434, the EPA believes that each of the individual tolerances in 40 CFR 180.434 at 1.0 ppm for apricots, nectarines, peaches, plums, and prunes, fresh are unnecessary duplicates and therefore is proposing to remove them. The use of propiconazole on those commodities will be covered by the remaining group tolerance. For reassessment counting purposes, the Agency will not count removal of those fruit tolerances as reassessments in a final rule because the use will remain covered by the existing ''stonefruit group'' tolerance. In addition, EPA is proposing to revise the commodity terminology in 40 CFR 180.434 to

conform to current Agency practice as follows: ''bananas'' to ''banana''; ''eggs'' to ''egg''; ''goats, fat'' to ''goat, fat;'' ''grass, hay (straw)'' to ''grass, hay''; ''hogs, fat'' to ''hog, fat''; ''mushrooms'' to ''mushroom''; ''oats, forage'' to ''oat, forage''; ''oats, straw'' to ''oat, straw''; and ''stonefruit group'' to ''fruit, stone, group 12.''

21. *Tetrachlorvinphos*. There are no active registrations for use of tetrachlorvinphos in or on alfalfa. All registered uses of tetrachlorvinphos on food or feed plant commodities, including alfalfa, were canceled in 1987. In June 1995, EPA had issued a RED for tetrachlorvinphos which recommended revoking the tolerances for ''alfalfa'' and ''sheep, fat'' because there were no registered uses associated with those commodities. On August 27, 1997 (62 FR 45416) (FRL–5737–4), EPA published the registrant's request for voluntary cancellation for the remaining tetrachlorvinphos product that could have had the sheep use. EPA believes that end users have now had sufficient time to exhaust those stocks and for treated commodities to have cleared channels of trade. Therefore, because there are no active registrations, the Agency is proposing to revoke tolerances in 40 CFR 180.252(a) for residues of tetrachlorvinphos in or on alfalfa and sheep, fat.

22. *Thiram*. On November 6, 1996 (61 FR 57419) (FRL–5570–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete certain uses, including bananas, celery, onions (dry bulb), and tomatoes from the thiram technical label, effective February 4, 1997. EPA allowed a period of 18 months for the registrant to sell or distribute product under previously approved labeling. Now, the Agency believes that end users have had sufficient time to exhaust product under the previously approved labeling and for treated commodities to have cleared channels of trade. Therefore, the Agency is proposing to revoke the tolerances in 40 CFR 180.132 for celery, onions (dry bulb), tomatoes, and ''bananas (from preharvest and postharvest application) of which not more than 1 part per million shall be in the pulp after peel is removed and discarded.'' For tolerance reassessment counting purposes, the EPA will count bananas as two tolerances (banana, with peel, pre- and post-harvest at 7.0 ppm and banana, pulp at 1.0 ppm). In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.132 to conform to current Agency practice as follows: ''apples'' to ''apple,'' ''peaches'' to ''peach,'' and ''strawberries'' to ''strawberry.''

23. *Tribufos*. On September 28, 2000, EPA issued an IRED for tribufos which recommended a tolerance that should be revoked (docket control numbers OPP–34148 and OPP–34148A). The Agency is proposing to revoke the tolerance in 40 CFR 180.272 for residues of tribufos (S,S,S-tributyl phosphorotrithioate) in or on cottonseed hulls because the tolerance is no longer needed, based on a cottonseed processing study, which showed that while residues of tribufos in cottonseed had been present, no concentration of tribufos residues occurred during normal processing procedures in cottonseed meal, hulls, crude and refined oils.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing certain tolerances for revocation that are in accordance with the recommendations made during the RED, IRED, or TRED process for specific pesticides. Printed copies of the REDs, IREDs, and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone: 1–800–490–9198; fax: 513–489–8695 and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; telephone: 1–800–553–6847 or 703–605–6000. Electronic copies of REDs, IREDs, and TREDs are available on the internet at http://www.epa.gov/pesticides/reregistration/status.htm.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances and commits to the data needed to support them. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention of the tolerances. Under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When Do These Actions Become Effective?

For the rule, the proposed revocations will affect tolerances for uses which have been canceled, in some cases, for many years. With the exception of certain tolerances for disulfoton, ethion, and fenthion for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that these revocations become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing to delay the effectiveness of those revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. With the exception of disulfoton, ethion, and fenthion, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is proposing an expiration/revocation date of December 9, 2003 for 13 specific disulfoton tolerances, March 31, 2005 for 18 specific ethion tolerances, and April 1, 2003 for 7 specific fenthion tolerances. The Agency believes that those revocation dates allow users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August 2006. As of April 8, 2002, EPA has reassessed over 4,000 tolerances. This document proposes to revoke a total of 153 tolerances, four of which were previously counted as reassessed for cryolite during a registration decision action on December 5, 1997 (62 FR 64294) (FRL–5756–5), and three of which were previously counted as reassessed for ethalfluralin during a registration decision action on January 17, 2002 (67 FR 2333) (FRL–6818–6). Of the 153 tolerances, 146 tolerances would be counted toward reassessment. Also, EPA considers six goat and sheep tolerances at 0 ppm for amitraz to be reassessed. Therefore, a total of 152 tolerance reassessments would be counted when the final rule is published toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual RED documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* , or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any

technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 9, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.108 [Amended]

2. Section 180.108 is amended by removing the entries for ''Grass (pasture & range)'' and ''Grass hay'' from the table in paragraph (a)(1).

3. Section 180.132 is revised to read as follows:

§ 180.132 Thiram; tolerances for residues.

(a) *General.* Tolerances for residues of the fungicide thiram (tetramethyl thiuram disulfide) in or on raw agricultural commodities are established as follows:

Commodity	Parts per million
Apple	7.0
Peach	7.0
Strawberry	7.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.145 [Amended]

4. Section 180.145 is amended by removing the entries for ''Beets, roots''; ''Radish, roots''; ''Rutabaga, roots''; and ''Turnip, roots'' from the table in paragraph (a)(1).

§ 180.169 [Amended]

5. Section 180.169 is amended by removing the entries for ''Barley, grain''; ''Barley, green fodder''; ''Barley, straw''; ''Cotton, forage''; ''Oats, fodder, green''; ''Oats, grain''; ''Oats, straw''; ''Rye, fodder, green''; ''Rye, grain''; and ''Rye, straw'' from the table in paragraph (a)(1).

6. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.2	3/31/05
Cattle, meat (fat basis)	0.2	3/31/05
Cattle, meat by-products	0.2	3/31/05
Citrus, dried pulp	25.0	3/31/05
Fruit, citrus	5.0	3/31/05
Goat, fat	0.2	3/31/05
Goat, meat	0.2	3/31/05
Goat, meat by-products	0.2	3/31/05
Hog, fat	0.2	3/31/05
Hog, meat	0.2	3/31/05
Hog, meat by-products	0.2	3/31/05
Horse, fat	0.2	3/31/05
Horse, meat	0.2	3/31/05
Horse, meat by-products	0.2	3/31/05

Commodity	Parts per million	Expiration/ Revocation Date
Milk fat (reflecting (N) residues in milk)	0.5	3/31/05
Sheep, fat	0.2	3/31/05
Sheep, meat	0.2	3/31/05
Sheep, meat by-products	0.2	3/31/05

* * * * *

7. Section 180.183 is amended by revising paragraph (a) to read as follows:

§ 180.183 O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide O,O-diethyl S-[2-(ethylthio)ethyl] phosphorodithioate and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Barley, grain	0.75	None
Barley, straw	5.0	None
Bean, dry	0.75	None
Bean, lima	0.75	None
Beans, snap	0.75	None
Broccoli	0.75	None
Brussels sprouts	0.75	None
Cabbage	0.75	None
Cauliflower	0.75	None
Coffee, bean	0.3	None
Corn, field, forage	5.0	12/9/03
Corn, field, stover	5.0	12/9/03
Corn, grain	0.3	12/9/03
Corn, pop	0.3	12/9/03
Corn, pop, forage	5.0	12/9/03
Corn, pop, stover	5.0	12/9/03
Corn, sweet, forage	5.0	12/9/03
Corn, sweet, stover	5.0	12/9/03
Corn, sweet, grain (K+CWHR)	0.3	12/9/03
Cotton, undelinted seed	0.75	None
Hop, dried cones	0.5	None
Lettuce	0.75	None
Oats, fodder, green	5.0	12/9/03
Oat, grain	0.75	12/9/03
Oat, straw	5.0	12/9/03
Peanut	0.75	None
Pea	0.75	None
Pea, field, vines	5.0	None
Pecan	0.75	12/9/03
Pepper	0.1	None
Potato	0.75	None
Sorghum, grain, stover	5.0	None
Sorghum, forage, forage	5.0	None
Sorghum, grain, grain	0.75	None
Soybean	0.1	None
Soybean, forage	0.25	None
Soybean, hay	0.25	None
Spinach	0.75	None
Sugarcane	0.3	None
Tomato	0.75	None
Wheat, hay	5.0	None
Wheat, grain	0.3	None
Wheat, straw	5.0	None

* * * * *

§ 180.206 [Amended]

8. Section 180.206 is amended by removing the entries for ''Beans, vines''; ''Peanuts, hay''; ''Peanuts, vines''; and ''Sugar beet, dried pulp'' from the table in paragraph (a).

9. Section 180.214 is amended by revising the table in paragraph (a) to read as follows:

§ 180.214 Fenthion; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.1	4/1/03
Cattle, meat	0.1	4/1/03
Cattle, meat by-products	0.1	4/1/03
Hog, fat	0.1	4/1/03
Hog, meat	0.1	4/1/03
Hog, meat by-products	0.1	4/1/03
Milk	0.01	4/1/03

* * * * *

§ 180.252 [Amended]

10. Section 180.252 is amended by removing from the table in paragraph (a)(1) the entries for ''Alfalfa'' and ''Sheep, fat.''

§ 180.261 [Amended]

11. Section 180.261 is amended by removing from the table in paragraph (a) the entries for ''Corn, fresh (inc. sweet K+CWHR)''; ''Corn, fodder''; ''Corn, forage''; and ''Corn, grain.''

12. Section 180.262 is amended by removing the text of paragraph (c) and reserving paragraph (c) with a heading to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

§ 180.263 [Amended]

13. Section 180.263 is amended by removing the entry for ''Almond, hulls'' from the table.

§ 180.272 [Amended]

14. Section 180.272 is amended by removing from the table in paragraph (a) the entry for ''Cottonseed, hulls.

115. Section 180.287 is amended as follows:

a. By redesignating the existing text as paragraph (a) and adding a paragraph heading.

b. By removing the entries from the table in newly designated paragraph (a) for ''Apples''; ''Beeswax''; ''Hops, dried''; ''Horses, fat''; ''Horses, mbyp''; and ''Horses meat.

cc. By alphabetically adding entries for ''Honeycomb'' and ''Hop, dried cones'' to the table in newly designated paragraph (a).

d. By adding and reserving with headings paragraphs (b), (c), and (d).

§ 180.287 Amitraz; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Honeycomb	6.0
Hop, dried cones	60.0
* * *	* *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.303 [Amended]

16. Section 180.303 is amended by removing from the table in paragraph (a)(1) the entries for ''Peanut, forage''; ''Pineapples, forage''; and ''Soybean straw.''

17. Section 180.315 is amended by revising the table in paragraph (a) to read as follows:

§ 180.315 Methamidophos; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Cotton, undelinted seed	0.1
Cucumber	1.0
Eggplant	1.0
Melon	0.5
Pepper	1.0
Potato	0.1
Tomato	1.0

* * * * *

§ 180.332 [Amended]

18. Section 180.332 is amended by removing from the table in paragraph (a) the entry for ''Potato waste, processed (dried).''

19. Section 180.342 is amended as follows:

a. By removing the entries for ''Beans, lima, forage''; ''Beans, snap forage''; ''Mushrooms''; ''Seed and pod vegetables'' and ''Sorghum milling fractions'' from the table in paragraph (a)(1).

b. By changing ''Beans, lima'' to ''Bean, lima'' ''Beans, snap'' to ''Bean, snap, succulent''; ''Beets, sugar, molasses'' to ''Beet, sugar, molasses''; ''Onions (dry bulb)'' to ''Onion, dry bulb''; ''Peppers'' to ''Pepper,'' ''Sorghum, fodder'' to ''Sorghum, grain, stover,'' ''Sorghum, grain'' to ''Sorghum, grain, grain''; ''Sunflower, seeds'' to ''Sunflower, seed'' in the table in paragraph (a)(1).

c. By removing the entries for ''Bean, forage''; ''Caneberries''; ''Pea forage''; and ''Sugarcane'' from the table in paragraph (a)(2).

d. By changing ''Nectarines'' to ''Nectarine''; ''Peaches'' to ''Peach''; ''Strawberries'' to ''Strawberry''; and ''Sweet potatoes'' to ''Sweet potato'' in the table in paragraph (a)(2).

e. By revising paragraph (c)(1).

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Asparagus	5.0
Grape	0.5
Leek (of which no more than 0.2 ppm is chlorpyrifos)	0.5

* * * * *

§ 180.404 [Amended]

20. Section 180.404 is amended by removing the entries for ''Cottonseed hulls''; ''Hogs, fat''; ''Hogs, mbyp''; and ''Hogs, meat'' from the table in paragraph (a).

21. Section 180.409 is amended by revising the table in paragraph (a)(1); removing paragraph (a)(2); and redesignating paragraph (a)(3) as paragraph (a)(2) to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Corn	8.0
Cattle, fat	0.2
Cattle, kidney and liver	2.0
Cattle, meat byproducts	0.2
Goat, fat	0.2
Goat, kidney, and liver	2.0
Goat, meat byproducts	0.2
Hog, fat	0.2
Hog, kidney and liver	2.0
Hog, meat byproducts	0.2
Horse, fat	0.2
Horse, kidney and liver	2.0
Horse, meat byproducts	0.2
Kiwifruit	5.0
Poultry, fat	0.2
Sheep, fat	0.2
Sheep, kidney and liver	2.0
Sheep, meat byproducts	0.2
Sorghum, grain, grain	8.0

* * * * *

§ 180.416 [Amended]

22. Section 180.416 is amended by removing the entries for ''Goats, fat''; ''Goats, meat''; and ''Goats, mbyp'' from the table in paragraph (a).

23. Section 180.427 is amended by revising the table in paragraph (a); removing the text in paragraph (c); and reserving paragraph (c) with a heading to read as follows:

§ 180.427 Fluvalinate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Honey	0.05

* * * * *

(c) *Tolerances with regional registration.* [Reserved]

* * * * *

§ 180.434 [Amended]

24. Section 180.434 is amended by revising the table in paragraph (a) as follows:

a. By removing the entries for ''Apricots,'' ''Grass, seed screenings'' ''Nectarines,'' ''Peaches,'' ''Plums,'' and ''Prunes, fresh.

bb. By changing ''Bananas'' to ''Banana''; ''Eggs'' to ''Egg''; ''Goats, fat'' to ''Goat, fat;'' ''Grass, hay (straw)'' to ''Grass, hay''; ''Hogs, fat'' to ''Hog, fat''; ''Mushrooms'' to ''Mushroom''; ''Oats, forage'' to ''Oat, forage''; and ''Oats, straw'' to ''Oat, straw.

cc. By changing ''Stonefruit group'' to ''Fruit, stone, group 12'' and realphabetizing the entry.

[FR Doc. 02–9070 Filed 4–12–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF DEFENSE

48 CFR Part 203

[DFARS Case 99–D028]

Defense Federal Acquisition Regulation Supplement; Anticompetitive Teaming

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD is withdrawing the proposed rule published at 66 FR 55157 on November 1, 2001. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy addressing exclusive teaming arrangements. The proposed amendments specified that certain exclusive teaming arrangements may evidence violations of the antitrust laws. Public comments received on this proposed rule and on an earlier proposed rule published at 64 FR 63002 on November 18, 1999, indicated that there is no demonstrated need for DFARS guidance on this subject. Therefore, DoD is withdrawing the proposed rule.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 99–D028.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–9050 Filed 4–12–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

Balance of Payments Program in Defense Supply Contracts

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: The Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) is seeking information that will assist it in evaluating a proposal to eliminate the application of the Balance of Payments Program (BOPP) to DoD procurements of supplies to be used overseas. An earlier document published in the **Federal Register** at 66 FR 47155 on September 11, 2001, requested public comments on eliminating the application of the BOPP to construction contracts. Those comments are now being evaluated. Interested parties are invited to submit written comments or recommendations relative to eliminating the application of the BOPP to supply contracts. It is requested that the comments submitted provide specific examples of the benefits to be achieved by the elimination of BOPP or identify specific harm that would accrue as a result of the elimination of the BOPP preference in DoD supply contracts.

DATES: Comments must be received no later than June 14, 2002.

ADDRESSEES: Send all comments to Charles A. Zuckerman, Deputy Director, Defense Procurement, Foreign Contracting, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060.

FOR FURTHER INFORMATION CONTACT: Susan M. Hildner, Procurement Analyst, Defense Procurement, Defense Systems Procurement Strategies, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 695–4258, or e-mail to *Susan.Hildner@osd.mil.*

SUPPLEMENTARY INFORMATION: The BOPP was established by Secretary of Defense Robert S. McNamara in July 1962, when he directed the Secretaries of the Military Departments to hold each of their respective department's expenditures of appropriated funds outside the United States, its possessions, and Puerto Rico, to an absolute minimum. The BOPP coverage was incorporated in the Armed Services Procurement Regulation (ASPR), the predecessor to the Defense Federal Acquisition Regulation Supplement (DFARS) in July 1964. There is no statutory authority for the BOPP.

The BOPP, as implemented, restricts the purchase of supplies that are not domestic end products, for use outside the United States, in procurements where the estimated cost is expected to exceed the simplified acquisition threshold. Its restrictions are similar to those of the Buy American Act (BAA). It uses the same definitions and evaluation procedures, including the application of a 50 percent factor to determine unreasonable cost. The BOPP was established as an interim measure to be used until the U.S. balance of payments deficit was corrected. However, 40 years later, the deficit continues even with the BOPP in place.

The BOPP is waived for the 21 countries with which DoD has a reciprocal procurement Memorandum of Understanding (MOU). The countries include Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. The BOPP is also waived for some foreign supplies and construction materials from 60 designated countries when the value of those procurements meets the threshold for application of the Trade Agreements Act (TAA). The Federal Acquisition Regulation (FAR) contains a listing of those countries in section 25.003. Additionally, under the Caribbean Basin Initiative, the United States Trade Representative has determined that, for acquisitions subject to the TAA, Caribbean Basin country end products must be treated as eligible products. An additional 23 countries are covered by the Caribbean Basin Initiative. These countries are also identified in FAR section 25.003. Under the provisions of the North American Free Trade Agreement, the BOPP is waived for Canada (who is already a designated country under the TAA) and Mexico. As a result, defense equipment procured under reciprocal procurement MOUs and eligible products in procurements subject to the TAA, receive equal consideration with domestic offers as a result of both the BAA and the BOPP being waived for these procurements. Given the extent to which these international agreements impact the application of the BOPP, few DoD supply procurements are subject to BOPP procedures.

In addition to the implications of the waivers described above, the proposal to eliminate the application of the BOPP to DoD procurements is a recognition that the marketplace has changed considerably since the enactment of the BOPP. In today's market, U.S. manufacturers rely heavily on global sources, particularly in the commercial arena. DoD encourages its acquisition managers to buy commercially produced items rather than entering into long and expensive development projects. Just as in the BAA, contractors must certify that end products offered for public use are domestic end products that have been manufactured in the United States and cost of the domestic or qualifying country components exceeds 50 percent of the cost of all components. To do this, suppliers to DoD must determine, control, and track the source of components. In today's global economy, this has become an extremely difficult task and creates a disincentive for commercial companies to sell to DoD. Commercial vendors do not track the cost of items manufactured in a foreign country. Elimination of the application of the BOPP to DoD procurements for use outside the United States would allow DoD to procure more commercial items if the items were lower in cost and expand access to state-of-the-art commercial technology.

The proposal to eliminate the application of the BOPP to DoD procurements of supplies to be used overseas recognizes both the limited usefulness of the BOPP and the international nature of today's marketplace.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–9051 Filed 4–12–02; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 67, No. 72
Monday, April 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amounts and Quota Period for Tariff-Rate Quotas for Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the aggregate quantity of 1,254,983 metric tons raw value of sugar that may be entered under the provisions of additional U.S. note 5(a) of the Harmonized Tariff Schedule of the United States (HTS) during fiscal year (FY) 2002. The following quantities are established for entry: 1,117,195 metric tons raw value of raw sugar under subheading 1701.11.10 of the HTS; 34,000 metric tons raw value of certain sugars, syrups, and molasses under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44; and 137,788 metric tons raw value of sugar from Mexico in accordance with the terms of the North American Free Trade Agreement (NAFTA).

EFFECTIVE DATE: April 15, 2002.

ADDRESSES: Inquiries may be mailed or delivered to the Import Policies and Programs Division Director, Foreign Agricultural Service, AgStop 1021, South Building, U.S. Department of Agriculture, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Richard Blabey (Division Director, Import Policy and Programs Division), 202–720–2916.

SUPPLEMENTARY INFORMATION:

Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides, in pertinent part, as follows:

The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscally year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture * * *, and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheading 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas (TRQs) for entry during the fiscal year beginning October 1. Allocations of the quota amounts among supplying countries and areas will be made by the United States Trade Representative.

Notice

I hereby give notice, in accordance with paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,254,983 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 2001, through September 30, 2002. This TRQ amount may be allocated among supplying countries and areas by the United States Trade Representative.

I will issue Certificates of Quota Eligibility (CQEs) to allow Brazil, the Dominican Republic, and the Philippines to ship up to 25 percent of their respective initial country allocations at the low-tier tariff during each quarter of FY 2002. I will allow Mexico to ship up to 15 percent, 35 percent, and 15 percent of its NAFTA allocation during each quarter of FY 2002. Argentina, Australia, Guatemala, and Peru will be allowed to ship up to 50 percent of their respective initial country allocations in the first 6 months of FY 2002. Unentered allocations, during any quarter or 6-month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to their respective country allocations may be entered at the low-tier tariff at any time during the fiscal year.

I have further determined that an aggregate quantity of up to 171,788 metric tons raw value of certain sugars, syrups, and molasses described in subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and2106.90.44 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 2001 through September 30, 2002. I have further determined that out of this quantity of 171,788 metric tons, the quantity of 13,656 metric tons raw value is reserved for the importation of specialty sugars. These TRQ amounts may be allocated among supplying countries and areas by the United States Trade Representative.

Mexico's NAFTA access of 137,788 metric tons raw value may enter the U.S. market as either raw or refined sugar, pursuant to Annex 703.2 of the NAFTA.

Signed at Washington, D.C. on April 9, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02–9054 Filed 4–12–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number: FV–02–331]

United States Standards for Grades of Canned Apples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; withdrawal.

SUMMARY: The Agricultural Marketing Service (AMS) published a notice soliciting comments on its proposed revision to change the United States Standards for Grades of Canned Apples.

Specifically, AMS proposed to lower the recommended drained weight for canned apples packed in No. 10 cans. After reviewing the Agency has decided to withdraw the proposal and terminate the action.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Randle A. Macon, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building; STOP 0247, 1400 Independence Avenue SW; Washington, DC. 20250; faxed to (202) 690–1527; or e-mailed to *Randle.Macon@usda.gov*. The United States Standards for Canned Apples is available either through the address cited above or by accessing the AMS Home Page on the Internet at *http://www.ams.usda.gov/fv/ppb.html.*

SUPPLEMENTARY INFORMATION:

Background

AMS received petitions from Independent Food Processors Company of Sunnyside, Washington; and Snokist Growers of Yakima, Washington, requesting the revision of the United States Standards for Grades of Canned Apples. The two petitioners represent a significant part of the Pacific Northwest apple industry. The Pacific Northwest apple industry provides almost half of the apples produced domestically.[1]

The petitions stated that the recommended drained weight of 96 ounces for apples packed in No. 10 size cans, in the U.S. Standards for Grades of Canned Apples, was difficult to obtain and places the Pacific Northwest processors at an economic disadvantage in bidding for government and non-government contracts. The reasons given for this disparity were that the varietal types of apples and the growing conditions in the Northwest region are different from other apple producing regions around the country.

The petitioners also stated that to meet the standard when packing certain varieties of apples, the cans are over-filled. This condition may cause damage to the sliced apples which may cause the slices to be graded as less than ''Grade A.''

Petitioners went on to state that to meet USDA recommended requirements for drained weight, some processors may be required to put more product into the can, causing economic hardship, damage to the product, and sometimes loss of the integrity of the can seal. If the seal's integrity was lost during processing, the product's wholesomeness was jeopardized.

[1] Source—USDA, NASS, ASB.

USDA reviewed the petitions and data submitted, and had gathered additional information from relevant government agencies and industry sources including growers, processors, and buyers. Based on this information, USDA found that there may be a disparity between the drained weights for canned apples from Pacific Northwest processors and those from other sections of the country.

The Department therefore proposed to lower the recommended drained weight for apples packed No. 10 size cans, from 96 ounces to 92 ounces in the U.S. Standards for Grades of Canned Apples.

Based on that information, the USDA published a notice in the **Federal Register**, on December 24, 1997 (62 FR 67326), proposing to revise the U.S. Standards for Grades of Canned Apples by lowering the recommended drained weight for sliced apples packed in No. 10 size cans, from 96 ounces to 92 ounces.

A 60 day comment period was provided for interested persons to send in comments on this recommended change to the Standards. The USDA received 19 comments responding to the notice from a wide range of sources, including trade associations, government agencies, and manufacturers. There were also comments from members of Congress which were received after the 60 day comment period had closed.

Commenters responding in favor of lowering the recommended drained weight for sliced apples packed in No. 10 size cans from 96 ounces to 92 ounces, stated that this change was necessary because the current U.S. standards puts Pacific Northwest processors at an economic disadvantage in bidding for government and non-government contracts. The reason given was that the varietal types of apples and the growing conditions in the Northwest region are different from other apple producing regions around the country. The Pacific Northwest varieties are high quality larger and firmer apples that do not pack down in the can as well as the smaller variety apples from other growing areas regardless of cut. The commenters state that to meet the standard when packing No. 10 size containers, the cans are over-filled. This condition causes damage to the sliced apples upon closure of the can which may cause the slices to be graded as less than ''Grade A.'' This over-filled condition may lead to loss of the integrity of the can seal. If the seal's integrity is lost during processing, the product's wholesomeness is jeopardized.

Another commenter, in favor of the change, stated that in order for Pacific Northwest apple processors to meet the recommended drained weight for sliced apples packed in No. 10 size cans, they would have to use smaller and softer (lower quality) apples when packing this product.

Of the opposing comments received, there was one central concern that was raised by most of the commenters. Most asserted that lowering the recommended drained weight for sliced apples packed in No. 10 size cans, from 96 ounces to 92 ounces, will lead to inferior quality sliced apples being utilized resulting in a negative impact on the sliced apple market. This, in turn would cause a decrease in apple consumption by the consumer.

The comments from members of Congress, which were received after the 60 day comment period had closed, echoed the same concern that lowering the recommended drained weight for sliced apples packed in No. 10 size cans, from 96 ounces to 92 ounces, would lead to inferior quality sliced apples being utilized. This action could also result in job and production losses.

One commenter stated that lowering the recommended drained weight for sliced apples packed in No. 10 size cans, might cause processors outside of the Pacific Northwest to produce canned sliced apples that will seem not completely filled or slack filled which will also result in a negative consumer reaction. At the same time, Pacific Northwest packs might be viewed as superior because the cans are always full.

The comments reflect a diverse spectrum of views on both sides of the issue as well as considerable opposition within the industry, to the proposed amendments. After reviewing and considering the comments, The Department has decided not to proceed with this action, but will consider any additional views or recommendations from the industry. Therefore, the proposed revision as published in the December 24, 1997, notice is withdrawn.

Dated: April 9, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–9053 Filed 4–12–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Ride-Along Program

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new information collection associated with the Ride-along Program application, a program which allows a private citizen to apply to ride along with Forest Service Law Enforcement officers.

DATES: Comments must be received in writing on or before June 14, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Director of Law Enforcement and Investigation, Forest Service, USDA, Mail Stop 1140, 1400 Independence Ave., SW., Washington, D.C. 20250–1140.

Comments also may be submitted via facsimile to (703) 605–5112 or by e-mail to *broemeling@fs.fed.us.*

The public may inspect comments received at 1621 N. Kent Street, Room 1015 Rosslyn Plaza East, Arlington, VA, during normal business hours. Visitors are encouraged to call ahead to (703) 605–4690 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Byran Roemeling, LE&I, (703) 605–4690 or Mary Ann Ball, Forest Service Information Collection Coordinator, (703) 605–4572, or send an e-mail to *maryball@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Ride-along Program.

OMB Number: 0596–New.

Type of Request: New.

Abstract: This information collection is necessary for Forest Service Law Enforcement and Investigation (LE&I) officers to approve a rider who applies to participate in the Ride-along program. This information collection provides additional protection for LE&I officers by confirming the identity and status of riders before allowing them to accompany LE&I officers in boats, cars, trucks, or other Forest Service vehicles. The purpose of the Ride-Along Program is for citizens to learn about and observe Forest Service Law Enforcement and Investigation (LE&I) tasks and activities. The program is intended to enhance Forest Service law enforcement community relationships and cooperation, improve the quality of Forest Service customer service, and provide LE&I personnel a recruitment tool. A rider must complete two forms in order to participate. Form FS–5300–33 asks for the participant's name, address, social security number, driver's license number, work address, location of the Ride-Along, and the reason for the Ride-Along. Law enforcement officers use Form FS–5300–33 to conduct a minimum background check before authorizing a person to ride along. Form FS–5300–34 is signed by riders to exempt law enforcement officers and the Forest Service from damage, loss, or injury liability incurred during the rider's participation in the program. If the information is not collected, riders will not be able to ride along with Forest Service law enforcement officers.

Estimate of Annual Burden:

	Minutes
FS–5300–33	5
FS–5300–34	5
Total	10

Type of Respondents: Citizens.

Estimated Annual Number of Respondents: 1200.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 34 hours per year.

Comment Is invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the information collection submission for Office of Management and Budget approval.

Dated: April 2, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–9016 Filed 4–12–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Census Bureau

National Survey of Volunteering and Giving Among Teens

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 14, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ken Kaplan or Sue Montfort, U.S. Census Bureau, FOB 3, Room 3351, Washington, DC 20233–8400 at (301) 457–3836.

SUPPLEMENTARY INFORMATION:

I. Abstract

This national survey will be the third in a series of surveys on volunteering and giving among teens in the United States. Independent Sector, a nonprofit, nonpartisan coalition of more than 700 national organizations, foundations, and corporate philanthropy programs, began the series in 1992, with a second study conducted in 1996. The purpose of this survey, and the series itself, is to provide trend data on the volunteering and giving behavior of young people; to chart the impact of major institutions, such as schools and religious institutions on encouraging such behavior; to highlight teens' attitudes on a variety of issues relating to their volunteering behavior; and to explore behavioral and motivational factors that influence volunteering and giving.

The original survey questionnaire was developed by a national advisory group of scholars and practitioners and addressed the following issues:

Who volunteers? Who gives? To whom? How much?

When did teenagers begin to volunteer and give?

What skills have teens learned from their community service?

To what degree do schools encourage volunteering? Do they offer courses requiring community service or require community service for graduation?

What are determinants of giving and volunteering behavior?

What is the motivation for giving and volunteering to various types of charitable causes?

What level of confidence do teenagers have in the institutions of our society?

This survey is unique because it contains information about both teenagers who give or volunteer and those that do neither. The findings have been of interest to policymakers, the media, researchers, and school principals and teachers, as well as leaders of voluntary organizations.

For the national sample, we will select a sample of households from expired Current Population Survey (CPS) rotations. If individual state samples are requested, we will utilize either the CPS or the decennial census to obtain a sample. We plan to pretest the questionnaire content. We will obtain parental consent prior to interviewing the teenage respondents.

II. Method of Collection

The information will be collected by telephone-only interviews in one of the Census Bureau's telephone centers. The data methodology will utilize either paper-and-pencil interviewing (PAPI) or computer-assisted telephone interviewing (CATI).

III. Data

Office of Management and Budget (OMB) Number: Not available.

Form Number: There will be no form number if conducted by CATI. If conducted by PAPI, the form number will be VCT–1.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000 respondents.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 2,500 hours.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 9, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8993 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on April 24 & 25, 2002 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

April 24

Public Session

1. Comments or presentations by the public.
2. Presentation on Web-based remote hardware management.
3. Presentation on Microelectromechanical (MEMS) technology and applications.
4. Presentation on battery and fuel cell technology.

April 24 & 25

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW., Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: April 2, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–8994 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Christopher Smith, at (202) 482–1756 or (202) 482–1442, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulation

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that carbon and certain alloy steel wire rod (steel wire rod) from Brazil is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on September 24, 2001.[1] See Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela, 66 FR 50164 (October 2, 2001) (Initiation Notice). Since the initiation of the investigation, the following events have occurred:

On October 12, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that the domestic industry producing steel wire rod is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod.[2] See Determinations and Views of the Commission, USITC Publication No. 3456, October 2001.

The Department issued a letter on October 16, 2001, to interested parties in all of the concurrent steel wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. The petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc., Ispat Sidbec Inc. (Canada). These comments were taken into consideration by the Department in developing the model matching characteristics and hierarchy for all of the steel wire rod antidumping investigations.

On November 9, 2001, the Department issued an antidumping questionnaire to Companhia Siderúrgica Belgo Mineira and its fully-owned subsidiary, Belgo-Mineira Participação Indústria e Comércio S.A. (BMP), collectively Belgo Mineira.[3] We issued supplemental questionnaires on December 27, 2001, January 18, and February 13, 2002. On December 5, 2001, the petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of steel wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine.[4]

On January 17, 2002, the petitioners requested a 30-day postponement of the preliminary determinations in this investigation. On January 28, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determinations until March 13, 2002. See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 3877 (January 28, 2002). On March 4, 2002, the petitioners requested an additional 20-day postponement of the preliminary determinations in this investigation. On March 15, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determinations until April 2, 2002. See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 11674 (March 15, 2002).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from Belgo Mineira on April 1, 2002. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, the request for postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**. Furthermore, any provisional measures imposed by this investigation have been extended from a four month period to not more than six months.

[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] With respect to imports from Egypt, South Africa, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated.

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

[4] On December 21, 2001 the petitioners further alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of steel wire rod from Trinidad and Tobago. On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to wire rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine; however, the Department did not make a determination with respect to wire rod from Brazil at that time. See Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Mexico and Trinidad and Tobago—Preliminary Affirmative Determinations of Critical Circumstances (February 4, 2002); See also Carbon and Certain Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine; Notice of Preliminary Determination of Critical Circumstances, 67 FR 6224 (February 11, 2002).

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recently completed fiscal quarters prior to the month of the filing of the petition (i.e., August 2001).

Scope of Investigations

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. In the petition, the petitioners identified four producers/exporters of steel wire rod. The data on the record indicate that two of these producers/exporters sold subject merchandise to the United States during the period of investigation (i.e., the period July 2000 through June 2001); however, due to limited resources we determined that we could investigate only the largest exporter, Belgo Mineira. See Respondent Selection Memorandum, from David Bede and Vicki Schepker, dated November 9, 2001.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Brazil during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or constructed value (CV): grade range, carbon content range, surface quality, deoxidization, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most

similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of steel wire rod from Brazil were made in the United States at less than fair value, we compared the export price (EP) and the constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs. We compared these to weighted-average home market prices or CVs, as appropriate.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

We calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses. These include freight charges incurred in transporting merchandise from the plant to a warehouse, warehousing expenses, brokerage and handling expenses, ocean freight and associated expenses (including marine insurance) for shipments by ocean vessel, as well as, U.S. port, discharge, cleaning and rebanding, inland freight (where applicable), U.S. duty, and other U.S. transportation expenses. We added an amount for duty drawback received on imports of coke used in the production of subject merchandise. We also deducted any rebates from the starting price and added interest revenue.

Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted direct and indirect selling expenses incurred in selling the subject merchandise in the United States, including direct selling expenses (credit), indirect selling expenses, and inventory carrying costs. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department also deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) is applied. In this case, Belgo Mineira requested that it be exempted from reporting the costs of further manufacture or assembly in the United States because of the complexity of reporting such data in this case. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department has the discretion to determine the CEP using alternative methods.

The alternative methods for establishing export price are: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. The Statement of Administrative Action (SAA) notes the following with respect to these alternatives:

''There is no hierarchy between these alternative methods of establishing the export price. If there is not a sufficient quantity of sales under either of these alternatives to provide a reasonable basis for comparison, or if Commerce determines that neither of these alternatives is appropriate, it may use any other reasonable method to determine constructed export price, provided that it supplies the interested parties with a description of the method chosen and an explanation of the basis for its selection. Such a method may be based upon the price paid to the exporter or producer by the affiliated person for the subject merchandise, if Commerce determines that such price is appropriate.'' See SAA accompanying the URAA, H.R. Doc. No. 103–316 (1994) at 826.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for one form of the merchandise sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. See 19 CFR 351.402 (2). Based on this analysis, and the information on the record, we determined that the estimated value added in the United States by TrefilArbed Arkansas (TrefilArbed), Belgo Mineira's affiliated further manufacturer in the United States, accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States.[5] Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. In this case, all of the products Belgo Mineira sold to its further manufacturer, as defined by the Department's model match criteria, were also sold to unaffiliated CEP customers during the POI. As a consequence, the Department relied on the first methodology, the price of identical merchandise, and calculated Belgo Mineira's margin for these sales by applying the margin for CEP sales of relevant products to the POI quantity of the identical further manufactured product. For further discussion, See Preliminary Determination Calculation Memorandum from Vicki Schepker and Christopher Smith to Constance Handley, April 2, 2002.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. See section 773(a)(1)(C)(ii)(II). We found that Belgo Mineira had a viable home market for steel wire rod. The respondent submitted home market sales data for purposes of the calculation of NV.

[5] *See* Memorandum from Vicki Schepker and Chris Smith to Gary Taverman dated February 8, 2002.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section below.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that steel wire rod sales were made in Brazil at prices below the cost of production (COP). See Initiation Notice, 66 FR at 50166. As a result, the Department has conducted an investigation to determine whether the respondent made home market sales at prices below its COP during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Companhia Siderúrgica Belgo Mineira's and BMP's[6] cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, including interest expenses, selling expenses, and packing expenses. We relied on the COP data submitted by Companhia Siderúrgica Belgo Mineira and BMP, except for Companhia Siderúrgica Belgo Mineira's reported cost of materials purchased from affiliated parties, which we adjusted to reflect the highest of market price, transfer price, or cost of production. In addition, for both Companhia Siderúrgica Belgo Mineira and BMP, we increased the G&A expenses to include non-operating expenses for profit sharing and excluded the non-operational income related to the sale of a subsidiary. We then calculated one weighted-average cost for each CONNUM based on the respective production quantities for the companies.

2. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any taxes that are not collected when the product is sold for export, billing adjustments, applicable movement charges, and direct and indirect selling expenses (which were also deducted from COP).

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with sections 773(b)(2)(B) and 773(b)(2)(C)(i) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded these below-cost sales.

C. Calculation of Normal Value Based on Home Market Prices

We determined home market prices net of billing adjustments and added interest revenue. Pursuant to section 773(a)(6)(B)(iii) of the Act, we deducted taxes imposed directly on sales of the foreign like product (ICMS, IPI, PIS, and COFINS taxes), but not collected on the subject merchandise. We note that, in some past cases involving Brazil, we have determined that the PIS and COFINS taxes are direct taxes and, as such, should not be deducted from NV. See, e.g., Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review 63 FR 12744, 12746 (March 16, 1998). However, in a recent countervailing duty (CVD) preliminary determination regarding Certain Cold-Rolled Carbon Steel Flat Products from Brazil, we preliminarily concluded that the PIS and COFINS taxes are indirect. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 9652, 9659 (March 4, 2002).

In reaching this decision, we examined the legislation underlying the PIS and COFINS to determine how Brazil assesses these taxes. Article 2 of the COFINS legislation states that ''corporate bodies'' will contribute two percent, ''charged against monthly billings, that is, gross revenue derived from the sale of goods and services of any nature.'' Likewise, Article ''Second'' of the PIS tax law (also found in the PIS and COFINS legislation) provides similar language stating that this tax contribution will be calculated ''on the basis of the invoicing.'' The PIS legislation further defines invoicing under Article ''Third'' to be the gross revenue ''originating from the sale of goods.''

Section 351.102(b) of the Department's regulations defines an indirect tax as a ''sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, border tax, or any other tax other than a direct tax or an import charge.'' As noted in the PIS and COFINS legislation, these taxes are derived from the ''monthly invoicing'' or ''invoicing'' originating from the sale of goods and services. Therefore, we preliminarily find that the manner in which these taxes are assessed is characteristic of an indirect tax, and we are treating PIS and COFINS taxes as indirect taxes for the purposes of this preliminary determination.

Where applicable, we also made adjustments for packing and movement expenses, such as inland freight and warehousing expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. In order to adjust for differences in packing between the two markets, we deducted home market packing costs from NV and added U.S. packing costs. For comparisons made to EP sales, we made circumstance-of-sale (COS) adjustments by deducting direct selling expenses incurred on home market sales (commissions, credit, and warranty expenses). We then added U.S. direct selling expenses (e.g., credit). For comparisons made to CEP sales, we deducted home market direct selling expenses, but did not add U.S. direct selling expenses. For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

D. Arm's-Length Sales

Belgo Mineira reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of

[6] BMP leases and operates the Juiz de Fora mill.

the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from Belgo Mineira about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar.

In the home market, Belgo Mineira reported three channels of distribution: direct sales to unaffiliated customers, warehouse sales to unaffiliated customers, and sales to affiliated customers. Belgo Mineira also reported two levels of trade in the home market: sales to unaffiliated customers and sales to affiliated customers. According to the respondent, only the most basic selling activities and services are required for sales to unaffiliated companies. In addition, because the sales to affiliates involve inter-company transactions, negotiations with and considerations of credit and collection for affiliated companies are far more standardized and less significant. While we agree that the intensity of selling activities varies between Belgo Mineira's channels of distribution in the home market, we do not agree that the variations support Belgo Mineira's claim of two distinct levels of trade in the home market. First, we note that Belgo Mineira described the same selling activities for all customers, regardless of the channel of distribution. In addition, Belgo Mineira provided the same sales process description for both channels of distribution; therefore, we are not persuaded that the processing of customer orders is affected by affiliation. Furthermore, Belgo Mineira's questionnaire responses contradict its claim that some selling activities are more significant with respect to unaffiliated customers. For example, Belgo Mineira claims that it provides more warranty and technical services to unaffiliated customers. [7] However, we note that, in Belgo Mineira's section B response, the company did not report any direct warranty expenses. In response to the Department's supplemental questionnaire, Belgo Mineira stated that it does not have a formal warranty program, but developed a customer-specific direct warranty adjustment.[8] This direct warranty adjustment was reported without regard to the affiliation of the customer. In addition, the company did not report any direct technical services expenses associated with its home market sales. For indirect warranty and technical service expenses, the company calculated a factor to account for the expenses of its quality departments. Again, this factor was the same for all customers, regardless of affiliation and market. Although there may be more negotiations, freight and delivery arrangements, and credit and collection expenses associated with sales to unaffiliated companies, we do not find that these differences support Belgo Mineira's claim that there are two separate levels of trade in the home market.[9] Therefore, we preliminarily determine that home market sales in the three channels of distribution constitute a single level of trade.

In the U.S. market, Belgo Mineira had both EP and CEP sales. Belgo Mineira reported EP sales through two channels of distribution: sales to unaffiliated trading companies and sales to unaffiliated end-users. The company identified sales through both of these channels as one level of trade. Because the selling activities associated with EP sales were similar to the selling activities in the home market, we have determined that the EP sales are at the same level of trade as the home market sales.

With respect to CEP sales, the company reported these sales through two channels of distribution: sales through TradeArbed and sales to TrefilArbed (an affiliated further manufacturer). The company claimed that its CEP sales (*i.e.,* sales to affiliates) are at a different level of trade than its EP sales (*i.e.,* sales to unaffiliated customers). Similar to its home market level of trade analysis, the company claims that there are two levels of trade in the U.S. market because Belgo Mineira has a close relationship with its affiliated importers, which affects the level of selling activities it performs for those customers. However, as in the home market level of trade analysis, we find Belgo Mineira's arguments unpersuasive. Specifically, we note that Belgo Mineira provides the same selling activities for all of its U.S. customers, regardless of the channel of distribution. In addition, Belgo Mineira provided the

[7] See Belgo Mineira's February 11, 2002 response to the Department's supplemental questionnaire at Exhibit B–16.

[8] Id. at 76.

[9] See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999).

same sales process description for all channels of distribution; therefore, we are not persuaded that the processing of customer orders is affected by affiliation. Furthermore, Belgo Mineira's questionnaire responses contradict its claim that some selling activities are more significant with respect to unaffiliated customers. For example, Belgo Mineira claims that it provides more warranty and technical service activities to unaffiliated customers.[10] However, we note that, in Belgo Mineira's section C response, the company did not report any direct warranty expenses. In addition, the company did not report any direct technical services expenses associated with its U.S. sales. For indirect warranty and technical service expenses, the company calculated a factor to account for the expenses of its quality departments. Again, this factor was the same for all customers, regardless of affiliation and market. Although, as with home market sales, there may be more negotiations and credit and collection expenses associated with sales to unaffiliated companies, we do not find that these differences support Belgo Mineira's claim that there are two separate levels of trade in the U.S. market.

After subtraction of the expenses incurred in the United States, in accordance with section 772(d) of the Act, we preliminarily determine that the selling functions corresponding to the adjusted CEP are the same as the selling functions for Belgo Mineira's home market sales. Therefore, we have determined that home market and CEP sales do not involve substantially different selling activities, as stipulated by section 351.412(c)(2) of the Department's regulations. Because we find that the level of trade for CEP sales is similar to the home market level of trade, we made no level-of-trade adjustment or CEP offset. See section 773(a)(7)(A) of the Act. We will examine this issue further at verification.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

[10] Id. at Exhibit B–16.

Critical Circumstances

In their December 5, 2001, submission, the petitioners' alleged that critical circumstances exist with respect to steel wire rod from Brazil. Throughout the course of this investigation, the petitioners and interested parties have submitted additional comments concerning this issue.

Since the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, section 351.206(c)(2)(i) of the Department's regulations provides that we must issue our preliminary critical circumstances determination not later than the date of the preliminary determination.

If critical circumstances are alleged, section 733(e)(1) of the Act directs the Department to examine whether there is a reasonable basis to believe or suspect that: (A) (i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. Section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent or more during a ''relatively short period'' may be considered ''massive.'' In addition, section 351.206(i) of the Department's regulations defines ''relatively short period'' as generally the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. As a consequence, the Department compares import levels during at least the three months immediately after initiation with at least the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of subject merchandise.

In this case, we have determined that imports have not been massive over a ''relatively short period of time,'' pursuant to 733(e)(1)(B) of the Act. As stated in section 351.206(i) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) The evidence presented by the petitioners in their December 5, 19, and 21, 2001 and January 25, 2002 letters; (ii) exporter-specific shipment data requested by the Department; (iii) comments by interested parties in response to the petitioners' allegations; (iv) import data available through the ITC's DataWeb website; and (v) the ITC's preliminary injury determination.

For the reasons set forth in the memorandum regarding our critical circumstances determination for Brazil, we find a sufficient basis exists for finding importers, or exporters, or producers knew or should have known antidumping cases were pending on steel wire rod imports from Brazil by June 2001 at the latest. See Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Brazil-Preliminary Negative Determination of Critical Circumstances Memorandum from Bernard T. Carreau to Faryar Shirzad, April 2, 2002. Further, as discussed in the above-cited memo, we determined it appropriate to use six-month base and comparison periods. Accordingly, we determined December 2000 through May 2001 should serve as the ''base period,'' while June 2001 through November 2001 should serve as the ''comparison period'' in determining whether or not imports have been massive in the comparison period.

In order to determine whether imports from Brazil have been massive, the Department requested that Belgo Mineira provide its shipment data from January 1999 up until the time of the preliminary determination. Based on our analysis of the shipment data reported, imports have decreased during the comparison period; therefore, we preliminarily find that the criterion under section 733(e)(1)(B) of the Act has not been met, i.e., there have not been massive imports of steel wire rod from Belgo Mineira over a relatively short time. See Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Brazil: Preliminary Negative Critical Circumstances Memorandum, dated April 2, 2002 (Critical Circumstances Memorandum). Because there have not been massive imports in this case, we

have determined that it is unnecessary to address the other prong of the critical circumstances test. For this reason, we preliminarily determine that critical circumstances do not exist for imports of steel wire rod produced by Belgo Mineira.

Regarding the ''All Others'' category, although the mandatory respondent did not have massive imports, we also considered country-wide import data for the products covered under the scope of this investigation. In determining whether massive imports exist for ''All Others,'' we compared the volume of aggregate imports during the base period to the volume of aggregate imports during the comparison period. Based on our analysis of the country-wide import data, imports of steel wire rod increased during the comparison period, but not by the requisite 15 percent. See Critical Circumstances Memorandum. Accordingly, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily find that critical circumstances do not exist for imports of steel wire rod produced by the ''All Others'' category.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of carbon and certain alloy steel wire rod from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Companhia Siderúrgica Belgo Mineira and Belgo-Mineira Participacão Indústria e Comércio S.A. (BMP)	65.76
All others	65.76

Disclosure

The Department will normally disclose calculations performed within five days of the date of publication of this notice to the parties of the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one steel wire rod case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 2, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–9215 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the Antidumping Duty Administrative Review for the Period October 1, 2000, through September 30, 2001.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department)'s regulations are to 19 CFR part 351 (2001).

Background

On October 1, 2001, the Department published in the **Federal Register** (66 FR 49923) a notice of opportunity to request an administrative review of the antidumping order regarding extruded rubber thread from Malaysia for the period October 1, 2000, through September 30, 2001. In accordance with 19 CFR 351.213(b)(2), on October 31, 2001, two producers/exporters of extruded rubber thread requested a review of the antidumping duty order on extruded rubber thread from Malaysia (*i.e.,* Filati Lastex Sdn. Bhd.

(Filati) and Heveafil Sdn. Bhd. (Heveafil)).

In November 2001, the Department initiated an administrative review for each of these companies (66 FR 58432 (Nov. 21, 2001)) and issued questionnaires to them.

On February 8, 2002, Filati withdrew its request for review.

On February 15, 2002, Heveafil requested an extension of the 90-day limit to withdraw its request for a review until March 29, 2002. We granted this extension on February 19, 2002, and on March 27, 2002, Heveafil withdrew its request for review.

Rescission of Review

Filati and Heveafil withdrew their requests for an administrative review for the above-referenced period on February 8 and March 27, 2002, respectively. Therefore, because no other interested party requested a review of Filati or Heveafil for this POR, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding this review of the antidumping duty order on extruded rubber thread from Malaysia for the period of October 1, 2000, through September 30, 2001. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: April 9, 2002.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 02–9080 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Notice of Extension of Time Limit for 2000–2001 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the current review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 2000 through July 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0189 or (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act, and all citations to the regulations are to 19 CFR Part 351 (2001).

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On September 24, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on pure magnesium from Canada, covering the period August 1, 2000, through July 31, 2001 (66 FR 49924). The preliminary results for the antidumping duty administrative review of pure magnesium from Canada are currently due no later than May 3, 2002.

Extension of Time Limits for Preliminary Results

Due to the complexity of the issues, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, May 3, 2002). *See* Memorandum from Team to Richard W. Moreland, ''Extension of Time Limit for Preliminary Results,'' dated, February 1, 2001. Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to not later than September 3, 2002, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 9, 2002

Susan Kuhback,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 02–9079 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decision and Amended Final Results of Administrative Review.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: George Callen or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0180 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Summary

On February 11, 1997, the Department published in the **Federal Register** its *Notice of Final Results and Partial Termination of Antidumping Duty Administrative Review on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 62 FR 6173. This notice covered various exporters for the period June 1, 1994, through May 31, 1995. As a result of litigation, the Court of International Trade (CIT) remanded the results of the review to the Department on July 30, 1999. See *Timken Company v. United States*, Court No. 97–01–00394, Slip Op. 99–73 (CIT July 30, 1999). The Department submitted its final results of

redetermination on remand to the CIT on December 13, 1999; the CIT affirmed the Department's final remand results and dismissed the case. See *Timken Company v. United States*, Slip Op. 200–13 (CIT February 8, 2000). On December 3, 2001, the Department published in the Federal Register its notice of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews*, 66 FR 60196 (*Amended Final Results*). In that notice, the Department published the final margins following affirmation of final remand results by the CIT.

The Amended Final Results did not take into account, however, the final remand results of another decision by the CIT affecting the entries of one firm, Transcom, Inc., during the period of review. See *Transcom, Inc. v. United States*, Slip Op. 00–157 (CIT November 22, 2000). In that decision, the CIT remanded the case to the Department to liquidate Transcom's entries from certain exporters at a rate equal to the cash deposit required on the merchandise at the time of entry pursuant to 19 CFR 353.22(e).

As there is a final and conclusive court decision in this action, we are amending our final results of review, and we will instruct the Customs Service to liquidate relevant entries of Transcom, Inc., at a rate equal to the cash deposit required on the merchandise at the time of entry for this review period.

This notice is published pursuant to section 751(a) of the Act.

Dated: April 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–9078 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on Thursday, April 25, 2002. The meeting will be from 10 a.m. to 12:30 p.m. in Room 3407, at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Monica Montavon, telephone: (202) 482–2257.

Dated: April 9, 2002.

James C. Leonard III,

Chairman, Committee for Implementation of Textile Agreements.

[FR Doc. 02–9013 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040902E]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Monkfish Committee, its Black Sea Bass Industry Advisory Panel, its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, and its Squid, Mackerel, Butterfish Committee will hold a public meeting.

DATES: The meetings will be held on Monday, April 29, 2002 through Thursday, May 2, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Omni Newport News Hotel, 1000 Omni Boulevard, Newport News, VA; telephone: 757–873–6664.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Monday, April 29, 2002

The Joint Monkfish Committee will meet from 10 a.m. until 5 p.m.

Tuesday, April 30, 2002

The Joint Monkfish Committee will meet again from 8 a.m. until noon.

The Black Sea Bass Industry Advisory Panel will meet concurrently from 8 a.m. until noon.

The Squid, Mackerel, Butterfish Committee will meet from 1 p.m. to 4 p.m.

The Council convenes from 4 p.m. to 5:30 p.m., to approve Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP) for public hearing.

Wednesday, May 1, 2002

The Council will meet jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board from 8:00 a.m. until noon, and again from 1 p.m. to 3 p.m.

Thursday, May 2, 2002

The Council will meet from 8 a.m. until 4:30 p.m.

Agenda items for the committees and Council meetings are:

The Joint Monkfish Committee will develop recommendations for management alternatives to be analyzed in Amendment 2 Draft Supplemental Environmental Impact Statement to the Monkfish Fishery Management Plan (FMP). The Black Sea Bass Advisory Panel will review public comments on public hearing document for Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP and develop advice and recommendations for: (1) alternative management measure(s) to govern the commercial sector of the black sea bass fishery; (2) permit requirements for fishermen; (3) prohibition of wet storage of black sea bass pots/traps during closures, limitation on number of pots/traps and associated tag program; and, (4) EFH gear impact alternatives for summer flounder, scup, black sea bass FMP to remedy disapproved EFH section in Amendment 12. The Squid, Mackerel, and Butterfish Committee will review the Monitoring Committee's recommendations for 2003 quotas and management measures for Atlantic mackerel, squid, and butterfish; address possible in-season adjustment for 2002 specifications; and, review Amendment 9 issues (April 2, 2002 letter from the Regional Administrator) including: develop EFH designations for *Loligo* and *Illex* eggs, assess gear impacts on EFH, examine bycatch reduction options and measures, consider NAFO transit

provisions, and review timeline for amendment completion; consider development of Framework 3 for the sole purpose of extending the *Illex* moratorium in the event Amendment 9 is not implemented by July 1, 2002; and, in the event that the Final Rule for Framework 2 is not published by July 1, 2002, consider establishment of July 1, 2002 as a control date. The Council will resurrect tabled motions from its prior meeting and approve adoption of public hearing document for Amendment 13 to the Surfclam and Ocean Quahog FMP. Jointly with the ASMFC, the Council will review and discuss public hearing comments for Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP; develop and decide final measures to be included in Amendment 13; and, adopt Amendment 13 for Secretarial submission. The Council will receive and hear a Law Enforcement presentation on Vessel Monitoring System (VMS). The Council will review the Squid, Mackerel, and Butterfish Committee's recommendations for 2003 quotas and management measures for Atlantic mackerel, squid and butterfish; review recommendation for possible in-season adjustment for 2002 specifications; develop and recommend 2003 squid, mackerel, and butterfish quota specifications and management measures; and, address various options regarding Framework 2, Amendment 9 and Framework 3. Receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–9084 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040902A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a work session, which is open to the public.

DATES: The CPSMT will meet Monday, April 29, 2002 and Tuesday, April 30, 2002. On Monday, April 29th, the CPSMT will meet from 10 a.m. until 5 p.m. On Tuesday, April 30th, the CPSMT will meet from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037; telephone: (858) 546–7000. On Monday, April 29th, the CPSMT will meet in the large conference room, Room D–203. On Tuesday, April 30th, the CPSMT will meet in Room A–214.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to initiate development of the 2002 stock assessment and fishery evaluation (SAFE) document for coastal pelagic species. The CPSMT will also discuss issues related to sea surface temperature and its affect on the Pacific sardine harvest guideline formula.

Although nonemergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meeting. CPSMT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: April 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–9085 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040902B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: An ad hoc committee of the Pacific Fishery Management Council (Council) will hold a meeting which is open to the public.

DATES: The meeting will convene at 8 a.m. on Monday, April 29, 2002, and adjourn the same day when business is completed.

ADDRESSES: The meeting will be held in Suite C of the California Department of Fish and Game Offices at 4665 Lampson Ave., Los Alamitos, CA 90720; telephone: (562) 342–7114.

Council address: 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Fishery Economics Staff Officer, telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review California Fish and Game Commission proposals for the creation of marine reserves for the Channel Islands National Marine Sanctuary

Although nonemergency issues not contained in the meeting agenda may come before the ad hoc committee for discussion, those issues may not be the

subject of formal action during the meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the ad hoc committees intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–9086 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040902D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Pelagics Plan Team (PPT) members will hold a meeting.

DATES: The meeting will be held April 30, 2002 through May 2, 2002, from 8:30 a.m. to 5 p.m., each day.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The PPT meeting will discuss and may make recommendations to the Council on the following agenda items:

1. 2001 annual report modules for American Samoa, Guam, Hawaii and the Commonwealth of the Northern Mariana Islands;
2. The economic impacts of swordfish longline fishery closure in Hawaii;
3. First quarter 2002 Hawaii and American Samoa longline fishery reports;
4. Hawaii Marine Recreational Fisheries Survey;
5. American Samoa longline limited entry program;
6. Maximum sustainable yield (MSY)-overfishing control rule;
7. Northwestern Hawaiian Islands National Marine Sanctuary and pelagic fisheries;
8. Sea turtle conservation and management;

i. Cooperative sea turtle research and conservation workshop;

ii. Status of field experiments to reduce longline turtle bycatch;

iii. Longline setting chute trials;

9. NMFS Honolulu Laboratory pelagic fish stock assessments;
10. NMFS Honolulu Laboratory moonfish (opah) and pomfret (monchong) study;
11. Ecosystem-based pelagic fisheries management;
12. Bigeye and yellowfin longline fishery performance models;
13. Hawaii longline fishery logbook and observer data evaluation;
14. Western Pacific pelagic fishery regulatory issues;
15. Preparatory Conference for Western Pacific Tuna Commission, and other international fishery meetings; and
16. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–9087 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Publication of the Trademark Manual of Examining Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) announces its intention to disseminate all future editions of the Trademark Manual of Examining Procedure (TMEP) solely in electronic format.

DATES: Comments must be received on or before May 15, 2002, to ensure consideration.

ADDRESSES: Mail comments to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513, attention: Sharon Marsh; fax comments to (703) 872–9282, attention Sharon Marsh; or e-mail comments to *eTMEP@uspto.gov.*

Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202–3513, from 8:30 a.m. until 5 p.m., Monday through Friday, and will be posted on the www.uspto.gov Web site.

FOR FURTHER INFORMATION CONTACT: Sharon Marsh, Office of the Commissioner for Trademarks, (703) 308–8910, extension 145; or e-mail to sharon.marsh@uspto.gov.

SUPPLEMENTARY INFORMATION: The Trademark Manual of Examining Procedure (TMEP) is a reference work that sets forth the practices and procedures that are followed in connection with the prosecution of applications to register marks at the USPTO. In the past, the USPTO has provided the text of the TMEP to the Government Printing Office (GPO) for paper publication, distribution and sale. The USPTO, as well as private practitioners and others, bought copies of the TMEP from the GPO. The GPO also provided deposit copies to libraries through its Federal Depository Library Program.

Currently, the TMEP is available on the Internet at the USPTO Web site (*http://www.uspto.gov*), and is also provided in paper and DVD–ROM formats. The USPTO hereby announces its intention to disseminate all future editions of the TMEP solely in electronic form. Electronic distribution of the TMEP will enable the USPTO to provide more frequent updates of the TMEP, thereby benefiting external and internal customers. Additionally, electronic dissemination will result in substantial cost savings.

A Federal agency that disseminates information electronically must do so in a manner consistent with guidelines set forth in OMB Circular A–130. Dissemination of the TMEP solely in electronic format is consistent with those guidelines.

The guidelines require that ''[a] change to electronic dissemination, as

the sole means of disseminating the product, will not impose substantial acquisition or training costs on users, especially State and local governments and small business entities.'' OMB Circular A–130, paragraph 8a(8)(e). Elimination of the paper version of the TMEP will not result in any significant acquisition costs. The Internet version of the TMEP can be accessed without any special equipment or software. Free access to the TMEP will continue to be provided on DVD–ROM and via the Internet at all eighty-seven Patent and Trademark Depository Library (PTDL) locations throughout the United States. Elimination of the paper version of the TMEP is unlikely to significantly increase the demand for computer capacity at the PTDLs or otherwise impose a burden on them. PTDLs routinely provide reference assistance and training in the access and use of this and other trademark information. However, the electronic version of the TMEP is highly user-friendly, and therefore, its use requires little or no training. In addition, commercial vendors currently provide the TMEP in paper form, and the USPTO anticipates that availability through this channel will continue.

The guidelines also provide that use of electronic media is proper if ''[t]he agency develops and maintains the information electronically.'' OMB Circular A–130, paragraph 8a(8)(a). The information set forth in the TMEP is both developed and maintained electronically.

A further requirement for use of electronic means to disseminate information is that the ''[e]lectronic media or formats are practical and cost effective ways to provide public access to a large, highly detailed volume of information.'' OMB Circular A–130, paragraph 8a(8)(b). Electronic dissemination of the TMEP is both cost-effective and practical. Non-electronic dissemination of the TMEP is fairly costly. For example, when the TMEP was last reissued, the USPTO expended over $20,000.00 in printing and binding costs. Electronic dissemination would eliminate these costs. Additionally, electronic dissemination is highly practical; such dissemination will allow the USPTO to issue updates whenever required by statutory, regulatory or policy changes. Additionally, the electronic format allows users to conduct electronic searches of the nineteen chapters and numerous subsections that comprise the TMEP.

The guidelines also require that ''[t]he agency disseminates the product frequently.'' OMB Circular A–130, paragraph 8a(8)(c). The TMEP is disseminated to users on demand. Currently, the product is updated every few years because of the burden involved in printing and disseminating a several-hundred-page paper document. Moving to electronic dissemination only will permit the USPTO to issue much more frequent updates and keep the TMEP current with changes in statute, regulation, and procedure.

The guidelines also provide that information should not be disseminated electronically unless ''[t]he agency knows a substantial portion of users have ready access to the necessary information technology and training to use electronic information dissemination products.'' OMB Circular A–130, paragraph 8a(8)(d). The USPTO is confident that a substantial proportion of its customers have ready access to the Internet, the forum on which the TMEP is posted, and that its customers have the necessary training to utilize the TMEP.

At this time, at least one publisher offers a paper TMEP in a slightly different format than that offered by the GPO. Thus, the USPTO is confident that, if there is a demand for a paper TMEP, an entrepreneurial publisher exists who will offer a paper publication.

Dated: April 9, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property, Director, United States Patent and Trademark Office.

[FR Doc. 02–9017 Filed 4–12–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0214]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Special Contracting Methods

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through December 31, 2002. DoD proposes that OMB extend its approval for use through December 31, 2005.

DATES: DoD will consider all comments received by June 14, 2002.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite OMB Control Number 0704–0214 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0214.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0326. The information collection requirements addressed in this notice are available electronically on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Ms. Susan L. Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and related provisions and clauses at DFARS 252.217–7012, Liability and Insurance, DFARS 252.217–7018, Change in Plant Location—Bakery and Dairy Products, DFARS 252.217–7026, Identification of Sources of Supply, and 252.217–7028, Over and Above Work; OMB Control Number 0704–0214.

Needs and Uses: DFARS Part 217 prescribes policies and procedures for acquiring supplies and services by special contracting methods. Contracting officers use the required information as follows:

The clause at DFARS 252.217–7012 is used in master agreements for repair and alteration of vessels. Contracting officers use the information required by paragraph (d) of the clause to determine that the contractor is adequately insured. This requirement supports prudent business practice, because it limits the Government's liability as a related party to the work the contractor performs. Contracting officers use the information required by paragraphs (f) and (g) of the clause to keep informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

Contracting officers use the information required by the clause at DFARS 252.217–7018 to determine the place of performance under contracts for bakery and dairy products. This information helps to ensure that food products are manufactured and processed in sanitary facilities.

Contracting officers use the information required by the provision at DFARS 252.217–7026 to identify the apparently successful offeror's sources of supply so that competition can be enhanced in future acquisitions. This collection complies with 10 U.S.C. 2384, Supplies: identification of supplier and sources, which requires the contractor to identify the actual manufacturer or all sources of supply for supplies furnished under contract to DoD.

Contracting officers use the information required by the clause at 252.217–7028 to determine the extent of ''over and above'' work before the work commences. This requirement allows the Government to review the need for pending work before the contractor begins performance.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 765,498.

Number of Responses: 53,160.

Responses per Respondent: 1.3.

Average Burden Per Response: 14.4 hours.

Frequency: On occasion.

Summary of Information Collection

Each provision or clause requires the offeror or contractor to submit certain information:

a. Paragraph (d)(3) of the clause at DFARS 252.217–7012 requires the contractor to show evidence of insurance under a master agreement for vessel repair and alteration.

b. Paragraphs (f) and (g) of the clause at DFARS 252.217–7012 require the contractor to notify the contracting officer of any property loss or damage for which the Government is liable, and to submit to the contracting officer a request for reimbursement of the cost of replacement or repair with supporting documentation.

c. Paragraphs (b) and (c) of the clause at DFARS 252.217–7018 require the offeror or contractor to obtain contracting officer approval before changing the place of performance of a contract for bakery or dairy products.

d. The provision at 252.217–7026 requires the apparently successful offeror to identify its sources of supply.

e. Paragraphs (c) and (e) of the clause at DFARS 252.217–7028 require the contractor to submit to the contracting officer a work request and a proposal for ''over and above'' work.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–9052 Filed 4–12–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Federal Acquisition Regulation; Information Collection; Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning price redetermination. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 14, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

Respondents: 3,500.

Responses Per Respondent: 2.

Annual Responses: 7,000.

Hours Per Response: 1.

Total Burden Hours: 7,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: April 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8977 Filed 4–12–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068]

Federal Acquisition Regulation; Information Collection; Economic Price Adjustment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic price adjustment. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 14, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Respondents: 5,346.
Responses Per Respondent: 1.
Annual Responses: 5,346.
Hours Per Response: .25.
Total Burden Hours: 1,337.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: April 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8978 Filed 4–12–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy; Meeting

AGENCY: United States Military Academy, Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, May 15, 2002.

Place of Meeting: Veteran Affairs Conference Room, Room 418, Senate Russell Office Building, Washington, D.C.

Start Time of Meeting: Approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Spring Meeting of the Board of Visitors. Review of the Academic, Military, Moral, Ethical, and Physical Programs, and the Bicentennial Campaign at the USMA. All proceedings are open.

Edward C. Clarke,

Lieutenant Colonel, U.S. Army, Executive Secretary, USMA Board of Visitors.

[FR Doc. 02–9074 Filed 4–12–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Final Environmental Impact Statement for the Platte West Water Production Facilities, Douglas and Saunders Counties, NE

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act and implementing regulations, an Environmental Impact Statement (EIS) has been prepared to disclose the environmental impacts from the Metropolitan Utilities District's (District) proposed new drinking water production facilities for the greater metropolitan area of Omaha, Nebraska. To meet peak-day demand through the year 2030, the District needs an additional maximum capacity of 100 million gallons per day (MGD). To provide for an acceptable level of water supply redundancy, the District needs an additional 62.8 MGD from a source other than the Missouri River.

FOR FURTHER INFORMATION CONTACT: For additional information and copies of this document contact Rebecca Latka, CENWO–PM–AE, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, Nebraska 68102, telephone at (402) 221–4602, or e-mail: *rebecca.j.latka@usace.army.mil.* Comments on this document can be addressed to Rodney Schwartz, CENWO–OD–RF, U.S. Army Corps of Engineers, 12565 W. Center Road, Omaha, Nebraska 68144–3869, telephone at (402) 22–4143, or e-mail: *rodney.j.schwartz@usace. army.mil.*

SUPPLEMENTARY INFORMATION: Six alternatives were selected for detailed evaluation. Each of the new water

supplies would consist of one or more treatment plants and well fields. The well fields would be in the Platte River alluvial (groundwater) aquifer. The three-way combination would also include a new surface water intake on the Missouri River. All the alternatives include implementation of a water conservation plan. For all the alternatives, significant environmental impacts requiring mitigation are predicted for flow in the Platte River, wetlands, private wells, property values, and recreation.

The well fields would pump water from the Platte River alluvial aquifer, which would lower the groundwater level around the well field and reduce the flow in the river. Lowering the water table is predicted to adversely impact about 5 to 30 private wells, cause the loss of 0.6 to 14.6 acres of wetlands, potentially alter 62 to 142 acres of wetlands, and remove subirrigation from 56 to 5,069 acres of land around the well fields. The loss of subirrigation could reduce property values because of impacts to crop yield and farm income. Recreation could be impacted by the lowering of water levels in private ponds and ponds and wetlands in the Two Rivers State Recreation Area. The impacts of flow depletion in the Platte River would be mitigated by the creation of a backwater habitat. Lost wetlands would be mitigated by the creation of new wetlands. Potential altered wetlands would be monitored for over 30 years and replaced if found to be changed by operation of the well field. The District would negotiate compensation with private property owners for reductions attributed to groundwater drawdown in well performance, subirrigation, and pond water levels. Impacts to the Two Rivers State Recreation Area would be mitigated by monetary compensation to the Nebraska Game and Parks Commission and the possible opening to the public of certain District properties for limited recreational use.

A public meeting and Section 404 hearing was held March 2, 1999 in Omaha, Nebraska to obtain comments on the original Draft EIS (DEIS), which was published in January 1999. Those comments and responses were included in the revised DEIS, which was published in February 2001. A public meeting to obtain comments on the revised DEIS was held March 21, 2001, in Omaha, Nebraska. These comments are addressed in the FEIS.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–9073 Filed 4–12–02; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Ford Island Development, Pearl Harbor, HI

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) announces its decision to consolidate selected operations on and to pursue limited private development of Ford Island. The decision includes construction of new facilities and the adaptive reuse of existing facilities on Ford Island as well as the sale or lease of selected DON properties on Oahu, Hawaii, with the proceeds of such sale or lease to be used to develop DON facilities at Ford Island.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Uehara (PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 471–9338, facsimile (808) 474–5909.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) in its entirety is provided as follows:

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(C), and regulations of the Council on Environmental Quality (CEQ) that implement NEPA, 40 CFR Parts 1500–1508, the Department of the Navy (DON) announces its decision to consolidate selected operations at Pearl Harbor onto Ford Island by constructing new facilities and adaptively reusing existing structures. This decision will include the sale or lease of selected DON properties on Oahu, Hawaii with the use of proceeds to develop DON facilities at Ford Island. This action will improve the efficiency and effectiveness of its operations, make greater use of its properties, and improve the quality of life of sailors and their families. This will be accomplished as set out in Alternative B (Medium Intensity), described in the Final Programmatic Environmental Impact Statement (PEIS) as the preferred alternative.

DON development on Ford Island may include new construction for up to 420 housing units, Bachelor Enlisted Quarters (BEQ) for up to 1,000 personnel, and infrastructure improvements such as roads and utilities. The development may also include a combination of new construction and adaptive reuse of existing structures for administrative space to accommodate 1,500 additional employees, and a consolidated training complex. Additionally, the action includes private development of up to 75 acres on Ford Island, which could include a historic visitor attraction, and allows for the lease of Halawa Landing and Iroquois Point/Pu‘uloa Housing, and sale of Waikele Branch, Naval Magazine (NAVMAG) Pearl Harbor and property at the former Naval Air Station (NAS) Barbers Point.

The action will be implemented through the Ford Island legislation (10 U.S.C. Section 2814), and other legislative authorities such as the annual Military Construction (MILCON) program, use of Non-Appropriated Funds (NAF), and the Military Housing Privatization Initiative (10 U.S.C. Sections 2871–2885).

Alternatives Considered: The PEIS evaluated four alternatives, including ‘‘no action,’’ that represent varying intensities of development on Ford Island. With the exception of ‘‘no action’’ (Alternative D), the alternatives provide for the conveyance and reuse—by either sale or lease—of selected DON properties on Oahu to support the Ford Island development.

Alternative A provides for both DON and private development on Ford Island. DON development would consist of new construction for up to 420 family housing units, Bachelor Enlisted Quarters (BEQ) for up to 1,000 personnel, and infrastructure improvements such as roads and utilities. Development would also include a combination of new construction and adaptive reuse of existing structures for administrative space to accommodate 1,500 additional employees, and a consolidated training complex. Private development envisioned includes an historic visitor attraction, commercial, and light industrial uses that could employ up to 5,600 workers and attract up to 15,000 daily visitors. The outlying properties will be conveyed or reused in the following ways in this alternative: The Halawa Landing property will be available for lease in support of an historic visitor attraction on Ford Island. The Iroquois Point/Pu‘uloa Housing will be available for lease for residential and directly related uses (e.g. playgrounds). Waikele Branch NAVMAG Pearl Harbor and the property at the former NAS Barbers Point will be offered for sale. Based on DON’s marketing analysis, it is anticipated that these properties will be reused for residential and related land uses.

Alternative B, Medium Intensity, is similar to Alternative A and provides for both DON and private development on Ford Island. DON development would be the same as that in Alternative

A. Private development includes an historic visitor attraction but assumes a lower intensity development for commercial and light industrial uses. Private development could have a population of 2,800 employees and 6,700 daily visitors. Halawa Landing will be leased in support of an historic visitor attraction on Ford Island. Other selected properties identified under Alternative A will be either leased or sold as noted to support the Ford Island Development Program.

Alternative C does not provide for private development on Ford Island. DON population could total 3,000 employees and 3,000 residents. In this alternative, the Halawa Landing property will not be leased. Selected properties identified under Alternative A will be either sold or leased as noted to support the Ford Island Development Program. Alternative C is the environmentally preferred action alternative due to limited private development.

Alternative D is the no action alternative.

Environmental Impacts: DON analyzed the direct, indirect, and cumulative impacts of each alternative on the environment. Potential significant impacts that could result from Alternative B are discussed below: There is potential for significant impacts on the wastewater collection system at Pearl Harbor. The main side sewage lift station, SY–001, which is currently at capacity, will be unable to accommodate additional sewage discharge flows. DON will initiate a utility study to determine what wastewater collection system improvements are necessary, including the additional capacity needed at lift station SY–001. DON will upgrade the SY–001 lift station to meet the additional capacity requirements.

There is potential for significant impacts on traffic. Projected traffic volumes at Kamehameha Highway and Ford Island Boulevard would exceed the intersection capacity during morning and afternoon peak hours. A combination of intersection improvements and travel demand management measures, such as mass transit and staggered work hours could mitigate the intersection impacts. For all areas leased by private developers, DON will require the developer to submit a Traffic Impact Analysis Report (TIAR) to identify what mitigation would be required so that traffic volumes would not exceed intersection capacities. DON will prepare follow-on NEPA documentation for future development projects on leased property that have adverse impacts on traffic in order to identify mitigation requirements.

There is a potential for impacts to marine species listed as endangered or threatened under the Endangered Species Act from project specific construction activities. The National Marine Fisheries Service (NMFS) chose to reserve comment until individual project specific actions are available for review. DON will review known data concerning marine species as specific projects are proposed and will consult with the NMFS as appropriate.

There is potential for significant impacts on cultural resources. The Section 106 process of the National Historic Preservation Act has been concluded with the execution of a Programmatic Agreement (PA) between DON, the Advisory Council on Historic Preservation, and the State Historic Preservation Officer. Other consulting parties, including the National Trust for Historic Preservation (NTHP), participated in development of the PA and signed the PA as interested parties. DON will carry out the Ford Island Development Program in accordance with the stipulations of the PA. The PA provides for the review of individual projects at Ford Island and contains provisions addressing potential effects of the lease and sale of lands with historic properties.

Response to Comments Received Regarding the PEIS: DON received comments from ten organizations and individuals on the Final PEIS. Most comments had been responded to in the Final PEIS. The following are new and substantive comments.

EPA commented that DON is responsible for oversight of environmental protection efforts on leased properties, especially related to the protection of water quality and implementation of pollution prevention measures. DON acknowledges that it will fulfill its responsibility as owner of leased properties pursuant to the specific environmental compliance requirements.

National Trust for Historic Preservation (NTHP) notified DoN that NTHP's written comments prepared for submittal at the August 2, 2001 public hearing on the Draft PEIS were not included in the Final PEIS. This omission was unintentional. However, DON has carefully considered Mr. David Scott's summary of NTHP's written comments, presented at the August 2, 2001 public hearing. NTHP also commented about the lack of an Integrated Cultural Resources Management Plan (ICRMP) for the Pearl Harbor Naval Complex. DON has resolved this issue by releasing the Final ICRMP for Pearl Harbor Naval Complex dated March 2002. Issues addressing impacts to historic properties were resolved with the signing of the PA.

The Commander Navy Region Hawaii determined that the discussion of jurisdiction for provision of police and security functions contained in the PEIS was incorrect. Jurisdiction is concurrent rather than exclusively federal as discussed in the PEIS. The issue of jurisdiction has no effect on the environmental analysis.

Conclusion: In determining whether or not to develop Ford Island and if so, to what level of intensity, I considered the following: DON operational and readiness requirements; anti-terrorism/force protection requirements; benefits to DoN; appropriate uses of historic resources; environmental impacts; costs associated with construction, operation, and maintenance; and comments received from the public on the Draft and Final PEIS. After carefully weighing all of these factors and analyzing the information presented in the Final PEIS, I have determined that the preferred alternative, Alternative B, best meets DON's needs. Alternative B meets DON's operational and readiness requirements with implementation of mitigation to minimize significant impacts on the environment. Alternative A was rejected because the additional private development intensity provided is not needed to satisfy DoN's Ford Island Development Program. Alternative C was rejected because there is limited economic return, which is needed to attract prospective developers to meet DoN's development needs on Ford Island. Alternative D was rejected as it would not enable DoN to improve the efficiency and effectiveness of its operations, make greater use of its properties, and improve the quality of life of sailors and their families.

As specific projects are proposed during the development of Ford Island, additional project-specific environmental analyses will be prepared where necessary and, if appropriate, may be tiered from the Programmatic EIS. DoN will continue to coordinate with other Federal, State, and local entities as necessary to determine if any additional mitigation measures are appropriate.

Dated: April 9, 2002.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

Dated: April 10, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–9082 Filed 4–12–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 9, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 2004 National Survey of Postsecondary Faculty (NSOPF:04): List Collection Procedures and Institution Questionnaire.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 448.

Abstract: The fourth cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructors. The study will provide information about faculty in postsecondary institutions, which is key to learning about the quality of education and research in these institutions. This study will expand the information about faculty and instructional staff in two ways: allowing comparisions to be made over time and examining critical issues surrounding faculty that have developed since the first three studies. This clearance request covers field test and full scale activities for the first phase of the study—collection of lists of current faculty and instructors from sampled postsecondary institutions and a questionnaire to be completed by institution administrative officials to provide information about the context of the institution, such as hiring and promotion practices, policies on benefits, tenure, workload, etc. A second clearance request will be submitted shortly covering the faculty survey materials.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–9002 Filed 4–12–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain Involvement for Proposed Deactivation and Demolition of the Zone 13 Sewage Treatment Plant at the Pantex Plant, Amarillo, TX

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: DOE proposes the demolition of a decommissioned sewage treatment plant which is currently in a floodplain, located on the Pantex Plant in Carson County, 17 miles northeast of Amarillo, Texas. In accordance with 10 CFR Part 1022, DOE will prepare a floodplain assessment and perform this proposed action in a manner so as to avoid or minimize potential adverse affects to or within the floodplain.

DATES: Comments on the proposed action are due to the address below no later than April 30, 2002.

ADDRESSES: Comments concerning this Notice should be addressed to: Floodplain Comments, Craig Snider, Environmental Engineer, Environmental Compliance, U.S. DOE/NNSA, Office of Amarillo Site Operations, P.O. Box 30020, Amarillo, Texas 79120–0020, (806) 477–5906, (806) 477–6972 (FAX).

Information on this proposed action, including a map of proposed activity locations, is also available.

FOR FURTHER INFORMATION CONTACT: Information on general DOE floodplain and wetland environmental review requirements is available from: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600 (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Zone 13 Sewage Treatment Plant was constructed in 1942, and provided sewage treatment for both the Pantex Plant and the Amarillo Air Force Base. The facility was deactivated in 1946 and remained inactive until 1952. A

chlorinator facility was added in 1952 and the treatment plant was returned to service. The treatment plant has been inactive since operations were discontinued in 1988. This project will include removing and disposing of abandoned equipment and piping; razing the buildings, roads, and associated structures; disposing of all waste; returning the land to grade, and re-establishing vegetation.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain assessment for this proposed action. After the floodplain assessment is complete, a Statement of Findings will published in the **Federal Register**. DOE will distribute copies of the Statement of Findings to Federal, State, and local governments, and others who submitted comments on the public notice.

Issued in Amarillo, Texas on March 28, 2002.

Vincent J. Zebrowski,

Acting Associate Director for Environmental & Site Engineering Programs.

[FR Doc. 02–9019 Filed 4–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC02–11–000, FERC Form 11]

Proposed Information Collection and Request for Comments

April 9, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 11 ''Natural Gas Monthly Quarterly Statement of Monthly Data'' (OMB No. 1902–0032) is used by the Commission to implement the statutory provisions of Sections 10(a), and 16 of the Natural Gas Act (NGA) 15 U.S.C. 717–717w and the Natural Gas Policy Act of 1978 (NGPA) (15 § U.S.C. 3301–3432). The NGA and NGPA authorize the Commission to prescribe rules and regulations requiring natural gas pipeline companies whose gas was transported or stored for a fee which exceeded 50 million dekatherms in each of the three previous calendar years to submit FERC Form 11. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Section 260.3 and Section 385.2011.

Although the submission of the form is quarterly, the information is reported on a monthly basis. This permits the Commission to follow developing trends on a pipeline's system. Gas revenues and quantities of gas by rate schedule, transition costs from upstream pipelines, and reservation charges are reported. This information is used by the Commission to assess the reasonableness of the various revenues and costs of service items claimed in rate filings. It also provides the Commission with a view of the status pipeline activities, allows revenue comparisons between pipelines, and provides the financial status of the regulated pipelines.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection has been reduced by the elimination of several schedules and the paper filing format requirement. The burden is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden in hours (1)x(2)x(3)
55	4	3	660

The estimated cost burden to respondents is $37,138 (660 hours / 2,080 hours per year × $117,041 per year average employee = $37,138). The cost per respondent is equal to $ 675.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including:

(1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9025 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–43–000]

Anadarko Gathering Co. and Anadarko Natural Gas Co.; Notice of Settlement Conference

April 9, 2002.

Pursuant to rule 601 of the Commission's rules of practice and procedure, 18 CFR 385.601, a settlement conference in the above docketed proceeding will be held on April 19, 2002, to address the outstanding Kansas ad valorem tax issues. The conference will be held in first floor hearing room of the offices of the Kansas Corporation Commission, 1500 Southwest Arrowhead Road, Topeka, Kansas, 66604. The settlement conference will begin at 9 a.m.

Steven A. Rothman, acting for the Dispute Resolution Service, will mediate the conference. He will be available to communicate in private with any party prior to the conference. If a party has any questions regarding the conference, please call Steve Rothman at (202) 208–2278 or send an e-mail to *Steven.Rothman@ferc.gov*. Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service at 1(877) FERC–ADR (337–2237) or (202) 208–0702 and his e-mail address is *Richard.Miles@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9031 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–046]

ANR Pipeline Company; Notice of Amendment of Negotiated Rate Agreement

April 8, 2002.

Take notice that on April 2, 2002, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to a Service Agreement between ANR and CoEnergy Trading Company. ANR states that the Amendment changes the (1) primary receipt point; (2) the MDQ; and (3) a formula which incorporates the new MDQ. ANR requests that the Commission accept and approve the Amendment to be effective April 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at*http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9045 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–047]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 8, 2002.

Take notice that on April 2, 2002, ANR Pipeline Company (ANR) tendered for filing and approval a Service Agreement between ANR and Dynegy Marketing and Trade (Dynegy) pursuant to ANR's Rate Schedule ETS (the ''Agreement''). ANR states that the Agreement contains a negotiated rate arrangement between ANR and Dynegy to be effective April 1, 2002. ANR requests that the Commission accept and approve the Agreement to be effective April 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at*http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9046 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–133–000]

Aquila Storage and Transportation, LP; Notice of Application

April 9, 2002.

Take notice that on April 1, 2002, Aquila Storage and Transportation, LP (Aquila), 1100 Walnut Street, Kansas

City, Missouri 64106, filed a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207 (a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a stratigraphic test well to determine the feasibility of developing a natural gas storage facility in Mojave County, Arizona. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Jeffrey Ayers, General Counsel, Aquila Storage and Transportation, LP, 1100 Walnut Street, Suite 3300, Kansas City, MO 64106; telephone (816) 527–1170, facsimile (816) 527–4170.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9021 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–046]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 9, 2002.

Take notice that on March 26, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contracts for disclosure of negotiated rate transactions:

FTS–1 Service Agreement No. 73372 between Columbia Gulf Transmission Company and Conoco Inc. dated March 20, 2002

and

FTS–1 Service Agreement No. 72420 between Columbia Gulf Transmission Company and Virginia Power Energy Marketing, Inc. dated March 25, 2002

Transportation service is to commence April 1, 2002 under the agreements.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9030 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–469–003 and RP01–22–005]

East Tennessee Natural Gas Company; Notice of Compliance Filing

April 9, 2002.

Take notice that on March 27, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on Appendix A and Appendix B of the filing.

East Tennessee states that the purpose of this filing is to comply with the Commission's January 30, 2002 Order on East Tennessee's Order No. 637 Settlement.

East Tennessee states that copies of its filing have been mailed to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9032 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–002; Docket No. RP01–484–000; Docket No. RP01–486–000; Docket No. RP00–139–000

El Paso Natural Gas Co.; Aera Energy, LLC, et al., Complainants v. El Paso Natural Gas Co., Respondent; Texas, New Mexico and Arizona Shippers, Complainants v. El Paso Natural Gas Co., Respondent; KN Marketing, L.P., Complainant v. El Paso Natural Gas Co., Respondent; Notice of Procedures To Be Followed at Public Conference

April 8 , 2002.

On March 21, 2002, the Commission issued a Notice of Public Conference in this proceeding. The notice stated that the Commission Staff will hold a public conference on April 16, 2002 to receive comments from interested parties on Staff's recommended basis for assigning capacity and receipt points on the El Paso Natural Gas Company (El Paso) system. Staff presented its recommendation at the March 13, 2002 Commission meeting, and a description of Staff's proposal is posted on the Commission's Web site at *http://www.ferc.gov/calendar/commissionmeetings/discussion_papers.htm*. The March 21, 2002 notice asked that persons interested in participating in the conference inform the Commission of their interest by March 28, 2002.

The Commission received responses from the persons listed on Appendix A indicating an interest in participating in the conference. As we explained in the prior notice, the conference will consist of short presentations by panels of interested parties, including full requirements (FR) shippers, contract demand (CD) shippers, state representatives and El Paso. Based on the requests filed by persons interested in participating on the panels, the following agenda is established.

First, El Paso will make a brief presentation addressing the practical impact and feasibility of implementation of Staff's proposal on the El Paso system. This presentation will be followed by three panels. Two representatives from El Paso will remain at the table during the panels to address any questions.

The first panel will consist of representatives of the state commissions, i.e., the Arizona Corporation Commission and the California Public Utilities Commission.

The second panel will consist of participants with the interests of FR shippers. Specifically this panel will include one representative of each of the following companies: Arizona Electric, APS/Pinnacle, El Paso Electric, El Paso Municipal Group, Phelps Dodge, Public Service Company of New Mexico, Salt River, Southern Union, and Southwest Gas.

The third panel will consist of participants with interests of CD customers. Specifically, this panel will consist of representatives from each of the following companies or groups: Dynegy, MGI Supply, ONEOK, SoCal Edison, SoCal Gas, and the Southern California Generation Coalition. In addition, there will be three representatives from Indicated Shippers on this panel.

Each panel will have one hour to make its presentation, but individual presentations should be limited to approximately five minutes. Shorter presentations are encouraged where possible. After the presentations, time will be allotted for questions to the panelists.

Parties should submit the names of the individuals participating on the panels on or before Wednesday, April 10, 2002. This information should be submitted by e-mail to *Robert.Petrocelli@ferc.gov* with a copy to *Ingrid.Olson@ferc.gov*.

Any questions concerning the procedures or format of the conference, may be addressed to either Robert Petrocelli at (202)208–2085 or Ingrid Olson at (202)208–2015.

Magalie R. Salas,

Secretary.

Appendix A

Arizona Corporation Commission
Arizona Electric Power Cooperative, Inc. (Arizona Electric)
Arizona Public Service Company and Pinnacle West Energy Cooperation (APS/Pinnacle)
California Public Utilities Commission (CPUC)
Dynegy Marketing and Trade, PG&E National Energy Group, Trading and Marketing, L.L.C., Aquila Merchant Services, Inc., Coral Energy Resources, L.P., Sid Richardson Energy Services Company, Sid Richardson Pipeline, Ltd., and Richardson Energy Marketing, Conoco Gas and Power Marketing (Dynegy)
El Paso Electric Company (El Paso Electric)
El Paso Municipal Customer Group (El Paso Municipal)
El Paso Natural Gas Company (El Paso)
Indicated Shippers
MGI Supply, LTD. (MGI Supply)
ONEOK Energy Marketing and Trading (ONEOK)
Pacific Gas and Electric Company (PG&E)
Panda Gila River L.P. (Panda)
Phelps Dodge Corporation and ASARCO, Inc. (Phelps Dodge)

Public Service Company of New Mexico (PNM)
Salt River Project (Salt River)
Southern California Edison Company (SoCal Edison)
Southern California Gas Company (SoCal Gas)
Southern California Generation Coalition
Southern Union Gas Company (Southern Union)
Southwest Gas Corporation (Southwest Gas)

[FR Doc. 02–9039 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–000]

Enogex, Inc.; Notice of Technical Conference

April 9, 2002.

Take notice that a technical conference will be held on Monday April 22, 2002, at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9029 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–138–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

April 9, 2002.

Take notice that on April 3, 2002, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston Texas 77002, filed in Docket No. CP02–138–000 a request pursuant to Sections 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211(b)) for authorization to construct and operate a delivery point located in St. Lucie County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''Rims'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

FGT requests authorization to construct and operate delivery point facilities, consisting of a 4-inch tap valve, connecting pipe and electronic flow measurement instrumentation, to serve Tropicana Products, Inc. (Tropicana). FGT states that it would use the facilities to transport up to 6,400 MMBtu equivalent of natural gas per day on a firm basis under capacity obtained through releases from existing certificated levels and therefore would not have an impact on FGT's peak day delivery. FGT estimates the cost of the facilities to be $111,775 and states that FGT would be reimbursed by Tropicana for all costs associated with the facilities. FGT states further that Tropicana would construct approximately 2,300 feet of connecting pipe downstream from FGT's facilities in the existing FT. Pierce South Utilities Authority. FGT asserts that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any questions regarding the application should be directed to Stephen T. Veatch, Director, Certificates and Regulatory Reporting, at: (713) 853–6549.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9022 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1081–000]

Indeck-Oswego Limited Partnership; Notice of Issuance of Order

April 9, 2002.

Indeck-Oswego Limited Partnership (IOLP) submitted for filing a rate schedule under which IOLP will engage in the sale of wholesale energy, capacity and certain ancillary services at market-based rates. IOLP also requested waiver of various Commission regulations. In particular, IOLP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by IOLP.

On April 1, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by IOLP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, IOLP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of IOLP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of IOLP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 1, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the

internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–9024 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–190–002]

Kern River Gas Transmission Company; Notice of Compliance Filing

April 8, 2002.

Take notice that on March 29, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, with an effective date of May 1, 2002.

Kern River states that the purpose of this filing is to implement the conversion of the quantities stated in certain of Kern River's transportation service agreements from volumetric (i.e., Mcf) quantities to thermal (i.e., Dth) quantities, using the methodology accepted in the Commission's January 31, 2002 ''Order Following Technical Conference.''

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9040 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–051]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 8, 2002.

Take notice that on March 27, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26W.02, to be effective April 1, 2002.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule NSS pursuant to Section 49 of the General Terms and Conditions of Natural's tariff.

Natural states that copies of the filing are being mailed to all parties set out on the official service list at Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at*http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9044 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3009–006, ER01–3153–006, and EL00–90–006]

New York Independent System Operator, Inc.; Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.; Notice of Filing

April 9, 2002.

Take notice that on April 3, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in accordance with the Commission's March 14, 2002, Order in the above-captioned proceedings.

The NYISO has mailed a copy of this compliance filing to all persons that have filed interconnection applications or executed Service Agreements under the NYISO Open Access Transmission Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania. The NYISO has also mailed a copy to each person designated on the official service lists maintained by the Commission in the above-captioned proceedings.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for

assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: April 18, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9023 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–210–000]

Questar Pipeline Company; Notice of Tariff Filing

April 8, 2002.

Take notice that on March 27, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, to be effective May 1, 2002.

Questar is proposing to initiate a new park and loan service that will provide customers with the ability to park and loan gas on a firm basis.

The proposed Park and Loan Rate Schedule PAL1 will apply to gas that is nominated to shippers' parking account or received for loan from Questar at Clay Basin. Park service will consist of Questar (1) accepting delivery of scheduled receipts into shippers' PAL1 account at Clay Basin; (2) holding the scheduled quantity of parked gas in its account and (3) making parked gas quantities available for scheduled delivery from Clay Basin as provided by Rate Schedule PAL1. Loan service will consist of Questar (1) making loaned gas quantities available for scheduled delivery from Clay Basin and (2) accepting delivery of scheduled receipts as a return of previously loaned gas to Clay Basin, subject to the conditions as provided by Rate Schedule PAL1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah, and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9042 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–044]

TransColorado Gas Transmission Company; Notice of Compliance Filing

April 8, 2002.

Take notice that on April 3, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Fourth Revised Sheet No. 21 and Seventeenth Revised Sheet No. 22A, to be effective April 2, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000. The tendered tariff sheets propose to revise TransColorado's Tariff to reflect negotiated-rate contracts with Exxon Mobil Gas Marketing Company and Dynegy Marketing & Trade.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at*http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9043 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–186–001]

Vector Pipeline L.P.; Notice of Revised Tariff Sheets

April 8, 2002.

Take notice that on March 29, 2002, Vector Pipeline L.P. (Vector), tendered for filing revised tariff sheets to its FERC Gas Tariff, Volume No. 1, to become effective April 1, 2002. Vector states that the purpose of this filing is to conform its tariff to the requirements of the Commission's March 28, 2002 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9041 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–112–000, et al.]

Wallula Generation, LLC, et al. Electric Rate and Corporate Regulation Filings

April 9, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Wallula Generation, LLC

[Docket No. EG02–112–000]

Take notice that on April 4, 2002, Wallula Generation, LLC (Wallula), a limited liability company with its principal place of business at Wallula Generation, LLC, c/o Newport Generation, Inc., 100 Bayview Circle, Suite 500, Newport Beach, California 92660, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Wallula states that it will be engaged directly and exclusively in the business of owning a 1,300 MW nominal (net) two 2x1 combined cycle gas-fired electric generating facility and related assets to be located on an approximately 175.48 acre site in rural Walla Walla County, Washington, approximately 8 miles south of the city of Pasco, 2 miles north of the unincorporated community of Wallula, and 7 miles southeast of the unincorporated community of Burbank. Wallula will sell its capacity exclusively at wholesale.

Comment Date: April 30, 2002

2. Cinergy Services, Inc.

[Docket No.ER02–1458–000]

Take notice that on April 1, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from WestPlains Energy—Kansas a division of Utilicorp United Inc. to Aquila, Inc. d/b/a Aquila Networks—WPK Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Aquila, Inc. d/b/a Aquila Networks—WPK.

Comment Date: April 22, 2002

3. Cinergy Services, Inc.

[Docket No. ER02–1459–000]

Take notice that on April 1, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from Missouri Public Service -a division of Utilicorp United Inc. to Aquila, Inc. d/b/a Aquila Networks—MPS Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Aquila, Inc. d/b/a Aquila Networks—MPS.

Comment Date: April 22, 2002

4. PPL Electric Utilities Corporation

[Docket No. ER02–1460–000]

Take notice that on April 1, 2002, PPL Electric Utilities Corporation (PPL Electric) file an Borderline Service Agreement between PPL Electric and Metropolitan Edison Company. PPL Electric requests an effective date of February 28, 2002 for the Borderline Service Agreement.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Comment Date: April 22, 2002

5. PPL Electric Utilities Corporation

[Docket No. ER02–1461–000]

Take notice that on April 1, 2002, PPL Electric Utilities Corporation (PPL Electric) file an Borderline Service Agreement between PPL Electric and Metropolitan Edison Company. PPL Electric requests an effective date of March 1, 2002 for the Borderline Service Agreement.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Comment Date: April 22, 2002

6. PPL Electric utilities Corporation

[Docket No. ER02–1462–000]

Take notice that on April 1, 2002, PPL Electric Utilities Corporation (PPL Electric) file an Borderline Service Agreement between PPL Electric and Pennsylvania Electric Company. PPL Electric requests an effective date of August 8, 2001 for the Borderline Service Agreement.

PPL Electric states that a copy of this filing has been provided to Pennsylvania Electric Company and to the Pennsylvania Public Utility Commission.

Comment Date: April 22, 2002

7. Maine Electric Power Company

[Docket No. ER02–1463–000]

Please take notice that on April 1, 2002, Maine Electric Power Company (MEPCO) tendered for filing an Executed Service Agreement for Non-Firm Point-to-Point Transmission Service with New Brunswick Power Corporation., designated as FERC Electric Tariff, Volume No. 1, as supplemented, Service Agreement No. 69.

Comment Date: April 22, 2002

8. Northwestern Energy

[Docket No. ER02–1464–000]

Take notice that on April 1,2002, NorthWestern Energy (NWE, formally The Montana Power Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13 an unexecuted Firm Point-To-Point Transmission Service Agreement with IdaCorp Energy under NWE's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon IdaCorp Energy.

Comment Date: April 22, 2002

9. Boston Edison Company

[Docket No. ER02–1465–000]

Take notice that on April 1, 2002, Boston Edison Company (Boston Edison) tendered for filing an executed, substitute Interconnection Agreement between Sithe Mystic Development LLC and Boston Edison. Boston Edison states that the Interconnection Agreement incorporates provisions of the Settlement Agreement approved by the Federal Energy Regulatory Commission (Commission) in this proceeding, 98 FERC ¶ 61,198 (2002).

Boston Edison requests an effective date for the compliance portion of March 6, 2001. For the amendments Boston Edison request an effective date of May 31, 2002 *Comment Date*: April 22, 2002

10. Aquila, Inc.

[Docket No.ER02–1466–000]

Take notice that on April 1, 2002, Aquila, Inc. submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51 Aquila, Inc. is succeeding to the electric tariffs, rate schedules, and service agreements currently on file with the Federal Energy Regulatory Commission (Commission) by UtiliCorp United Inc.

Comment Date: April 22, 2002

11. Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company

[Docket No. RT01–35–005]

Take notice that on March 29, 2002, Avista Corporation, Bonneville Power Administration, Idaho Power Company, NorthWestern Energy, L.L.C. (formerly the Montana Power Company), Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company, joined by British Columbia Hydro and Power Authority, a nonjurisdictional Canadian utility, (collectively, the filing utilities), provided to the Federal Energy Regulatory Commission (Commission) a Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000, in accordance with 18 CFR 35.43(c)(2) and (g).

Comment Date: May 13, 2002

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9020 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2416–009; South Carolina]

Aquenergy Systems, Inc.; Notice of Availability of Final Environmental Assessment

April 8, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license for the Ware Shoals Hydroelectric Project and has prepared a Final Environmental Assessment (FEA) for the project. The project is located on the Saluda River, in the Town of Ware Shoals, within the counties of Laurens, Greenwood, and Abbeville, South Carolina. No federal lands or facilities are occupied or used by the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Timothy Looney at (202) 219–2852.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9036 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2312]

PPL Great Works, LLC; Notice of Authorization for Continued Project Operation

April 8, 2002.

On March 31, 2000, PPL Great Works, LLC, licensee (on October 30, 2000, the Commission issued an order amending the license to reflect a name change from PP&L Great Works, LLC to PPL Great Works, LLC) for the Great Works Project No. 2312, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2312 is located on the Penobscot River in Penobscot County, Maine.

The license for Project No. 2312 was issued for a period ending March 31, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2312 is issued to PPL Great Works, LLC for a period effective April 1, 2002, through March 31, 2003, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PPL Great Works, LLC is authorized to continue operation of the Great Works Project No. 2312 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9035 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7000–015]

Newton Falls Holdings, LLC; Notice of Public Scoping and Site Visit for the Newton Falls Hydroelectric Project

April 8, 2002.

Pursuant to the National Environmental Policy Act and procedures of the Federal Energy Regulatory Commission, the Commission staff intends to prepare an Environmental Assessment (EA) that evaluates the environmental impacts of issuing a new license for the constructed and operating Newton Falls Hydroelectric Project, No. 7000–015, located on the Oswegatchie River in St. Lawrence County, New York. The subject project does not include federal land.

The EA will consider both site-specific and cumulative environmental effects, if any, of the licensee's proposed actions and reasonable alternatives. Preparation of staff's EA will be supported by a scoping process to ensure identification and analysis of all pertinent issues.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings. Rather, the Commission staff will issue a Scoping Document: (1) outlining staff's preliminary evaluation of subject areas to be addressed in the EA; and (2) requesting concerned resource agencies, Native American tribes, non-governmental organizations, and individuals to provide staff with information on project area environmental resources and recreational access needs, and to recommend site-specific issues and concerns that should be evaluated in the EA.

Before issuing the scoping document, Commission staff will hold a site visit of the Newton Falls Hydroelectric Project with representatives of the current licensee and Reliant Energy, the proposed new owner of the project. The site visit will take place: (1) on Monday, May 6, 2002, from 3 p.m. to about 6 p.m.; and (2) on Tuesday, May 7, 2002, from 8:30 a.m. until approximately 11:30 A.M. The purpose of the site visit is to enable Commission staff responsible for preparing the environmental assessment to view the area's existing resources and the project's constructed facilities.

Officials of state and federal resource agencies and representatives of concerned non-governmental organizations are invited to participate at the site visit. Persons planning to attend should notify Mr. Tom Skutnik of Reliant Energy by telephone at (315) 413–2789 or by E-mail at: *tskutnik@reliant.com*. All participants will meet at the Newton Falls mill parking area located off County Road 60 in Newton Falls, New York.

If you have any questions concerning this matter, please telephone the Commission's Environmental Coordinator for the Newton Falls Project at (202) 219–2780 or contact him by E-mail at *james.haimes@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9038 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

April 9, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 233–081.

c. *Date filed:* October 19, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3, 4, 5 Project.

f. *Location:* On the Pit River, in Shasta County, near the community of Burney and the Intermountain towns of Fall River Mills and McArthur, California. The project includes 746 acres of lands of the United States, which are administered by the Forest Supervisor of the Shasta Trinity National Forest and the Forest Supervisor of the Lassen National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, CA 94177, (415) 973–6950.

i. *Commission Contact:* Any questions concerning this notice should be addressed to John Mudre, e-mail address *john.mudre@ferc.fed.us,* or telephone (202) 219–1208.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE.; Washington, DC 20426. Please include the project number (Project No. 233–081) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to Intervene and Protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing project consists of the following existing facilities: three hydraulically-connected developments, with a total of four dams, four reservoirs, three powerhouses, associated tunnels, surge chambers, and penstocks. The powerhouses contain nine generating units with a combined operating capacity of about 325 MW. No new construction is proposed.

The Pit 3 development consists of: (1) The 1,293-acre Lake Britton, with a gross storage capacity of 41,877 acre feet; (2) the Pit 3 Dam, with a crest length of 494 feet and a maximum height of 130 feet; (3) a concrete tunnel in two sections, 19 feet in diameter with a total length of about 21,000 feet; (4) a surge tank; (5) three penstocks about 10 feet in diameter and 600 feet in length; (6) a 47-foot by 194-foot reinforced concrete multilevel powerhouse; (7) three generating units, driven by three vertical Francis turbines, with a combined normal operating capacity of 70 MW; and (8) appurtenant facilities

The Pit 4 development consists of: (1) The 105-acre Pit 4 Reservoir, with a gross storage capacity of 1,970 acre feet; (2) the Pit 4 Dam, consisting of a gravity type overflow section 203 feet in length with a maximum height of 108 feet and a slab-and-buttress type section 212 feet in length with a maximum height of 78 feet; (3) a 19-foot-diameter pressure tunnel with a total length of about 21,500 feet; (4) two 12-foot-diameter penstocks about 800 feet in length; (5) a four-level 58-foot by 155-foot

reinforced concrete powerhouse; (6) two generating units, driven by two vertical Francis turbines, with a combined normal operating capacity of 95 MW; and (7) appurtenant facilities.

The Pit 5 development consists of: (1) The 32-acre Pit 5 Reservoir, with a gross storage capacity of 314 acre feet; (2) the Pit 5 Dam, with a concrete gravity overflow structure 340 feet in length and a maximum height of 67 feet; (3) the 19-foot-diameter Tunnel No. 1; (4) the 48-acre Pit 5 Tunnel Reservoir, with a gross storage capacity of 1,044 acre feet; (5) the Pit 5 Tunnel Reservoir Dam, approximately 3,100 feet long and 66 feet high; (6) the 19-foot-diameter Pit 5 Tunnel No. 2; (7) four steel penstocks about 8 feet in diameter and 1,400 feet in length; (8) a 56-foot by 266.5-foot reinforced concrete multilevel powerhouse; (9) four generating units, driven by four vertical Francis turbines, with a combined normal operating capacity of 160 MW; and (10) appurtenant facilities.

m. A copy of the application is on file and available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9026 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

April 9, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to Amend Language of Article 42.

b. *Project No:* 2716–037.

c. *Date Filed:* March 1, 2002.

d. *Applicant:* Virginia Electric and Power Company.

e. *Name of Project:* Bath County Pumped Storage Station.

f. *Location:* The project is located on Back Creek and Little Back Creek in Bath County, Virginia.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contacts:* Ms. Sara S. Bell, Bath County Pumped Storage Station, HCR 1 Box 280, Warm Springs, VA 24484, phone (540) 279–3068 or Mr. James W. Thorton, Dominion Generation, 5000 Dominion Boulevard, Glen Allen, VA 23060, phone (804) 273–3257.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Fletcher at (202) 219–1206, or e-mail address: *robert.fletcher@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 10, 2002.

All documents (original and seven copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2716–037) on any comments or motions filed.

k. *Description of Request:* Article 42 states that, except as the Commission may otherwise order on its own motion or at the request of the Virginia State Water Control Board and the Virginia Department of Game and Inland Fisheries or the U.S. Fish and Wildlife Service, after notice and opportunity for hearing, the licensee is to release a combined minimum discharge of 15 cubic feet per second (cfs), including seepage flows, from the upper and lower reservoirs. The minimum discharge from the upper reservoir shall be 2 cfs and the minimum discharge from the lower reservoir shall be 10 cfs, including seepage flows in each case. However, the minimum discharges may be temporarily modified if they are limited by natural inflows and the depletion of conservation storage or if a modification is required by operating emergencies beyond the licensee's control.

The licensee proposes to change the language of article 42 to parallel the release strategy under its Virginia Department of Environmental Quality's Virginia Water Protection Permit. The proposed change would be as follows:

Article 42. Under normal operating conditions, with full conservation storage of 3,200 acre-feet, the licensee shall release a combined minimum daily average discharge from the upper and lower reservoirs of 15 cubic feet per second (cfs), including seepage flows. The minimum discharge from the upper reservoir will always be 2 cfs or greater and the minimum discharge from the lower reservoir will always be 10 cfs or greater, including seepage flows in each case.

When low inflow to the project reservoirs results in 50 percent or greater depletion of the 3,200 acre-feet of conservation storage, the licensee may reduce the releases to a daily average of 7.5 cfs from the lower reservoir (at no time to be below 6 cfs) and 2.0 cfs from the upper reservoir.

If conditions persist and the 3,200 acre-feet of conservation pool is depleted by 80 percent or greater, the daily average discharge from the lower reservoir may be reduced to 5.0 cfs (at no time to be below 4 cfs) and the discharge from the upper reservoir may be reduced to 1.5 cfs.

These requirements may also be temporarily modified if required by operating emergencies beyond the control of the licensee. If drought conditions deplete the entire 3,200 acre-feet of conservation pool, the licensee may, upon mutual agreement with the Virgina Department of Environmental Quality (VDEQ) and Virginia Department of Game and Inland Fisheries, and following public input as determined by the VDEQ, reduce flows further. If the flows are so modified, the licensee shall notify the Commission no later than ten days after each such incident.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may

also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application. o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application. p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9027 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of Time To Commence Project Construction and Soliciting Comments

April 9, 2002.

Take notice that the following request for extension of time has been filed with the Commission and is available for public inspection:

a. *Application Type:* Extension of Time to Commence Project Construction.

b. *Project No:* 10893–007.

c. *Date Filed:* January 22, 2002.

d. *Applicant:* Hy Power Energy Company.

e. *Project Name:* Inglis Lock By-pass Dam Project.

f. *Name and Location of Project:* The project, a conduit hydroelectric facility, would be constructed near the Town of Inglis, in Levy County, Florida.

g. *Filed Pursuant to:* 18 CFR 375.308 (c)(4).

h. *Applicant Contact:* Mr. Richard A. Volkin, Engineering Company, Inc. 600 Chapman Street, P.O. Box 359, Canton, MA 02021, (781) 821–4338.

i. *FERC Contact:* Any questions on this notice should be directed to Mr. Lynn R. Miles at (202) 219–2671.

j. *Deadline for filing comments and or motions:* May 10, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, Interventions and Protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the ''e-Filing'' link.

Please include the project number (P–10893–007) on any comments or motions filed.

k. Description of Proposal: The exemptee has requested a one-year extension of time to commence project construction and comply with Paragraph (C) of the Commission's Order Denying Rehearing, issued February 8, 2001 (94 FERC ¶ 61,112).

l. *Locations of the application:* A copy of the exemptee's request is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.gov using the ''RIMS'' Link, select ''Docket#'' and follow the instructions (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9028 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

April 8, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 606.

c. *Date filed:* March 12, 2002.

d. *Submitted By:* Pacific Gas and Electric Company.

e. *Name of Project:* Kilarc-Cow Creek Project.

f. *Location:* Kilarc-Cow Creek Project is located in the state of California, Shasta County, on the Old Cow Creek and South Cow Creek, near the town of Chester, Greenville, and Quincy.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to section 16.19 of the Commission's regulations, the licensee is required to make available the information described in section 16.7 of the regulations. Such information is available from Pacific Gas and Electric, 245 Market Street, Room 1137, San Francisco, California 94105. Contact Mr. John Gourley at 415–972–5772.

i. *FERC Contact:* Kenneth Hogan, 202–208–0434, Kenneth.Hogan@Ferc.Gov.

j. *Expiration Date of Current License:* March 27, 2007.

k. *Project Description:* The project consist of two powerhouses with an installed capacity of 5000 kilowatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 606 Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 27, 2005.

A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing maky be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 02–9037 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT02–2–000; RT01–74–000; RT01–100–000; RT01–1–000; and RM98–1–002 (Not Consolidated)]

State-Federal Regional RTO Panels; GridSouth Transco, L.L.C.; Regional Transmission Organizations; Regional Transmission Organization Informational Filings; Regulations Governing Off-the-Record Communications; Notice of State-Federal Southeast Regional Panel Duscussion

April 5, 2002.

Take notice that on April 22, 2002, from 1 p.m. to 3 p.m., a State-Federal Southeast Regional Panel discussion will be held, pursuant to the Commission's Order issued November 9, 2001, in Docket No. RT02–2–000, *et al.* The meeting will take place between, and is limited to, the Federal Energy Regulatory Commission, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and their staffs, and will address Regional Transmission Organization (RTO) issues as they affect public utilities in the Carolinas. The meeting will be held at 888 1st St. NE., Washington, DC 20246. A transcript of the panel discussion will be placed in the above-listed dockets.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9033 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

April 5, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Docket No. RM01–12–000, RT01–2–000, *et al*	03–18–02	Commission.[1]
2. Docket No. RM01–12–000, RT01–2–000, *et al*	03–18–02	Commission.[2]
3. Docket No.RM01–12–000, RT01–2–000, *et al*	03–19–02	Commission.[3]
4. Docket No. RM01–12–000, RT01–2–000, *et al*	03–19–02	Commission.[4]
5. Project No. 1354–000	04–01–02	Karen Miller.
6. Project No. 2694–002	04–2–02	Brian B. Cole.

[1] Transcript of Midwest State Commissioners' Regional Teleconference on Electricity Market Design and Structure convened 3/18/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al.*

[2] Transcript of Southeast State Commissioners' Regional Teleconference convened 3/18/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al.*

[3] Transcript of Western State Commissioners' Regional Teleconference convened 3/19/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al.*

[4] Transcript of the Northeast State Commissioners' Regional Teleconference convened 3/19/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–9034 Filed 4–12–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0024; FRL–6832–9]

Acephate; Cancellation Order for Certain Uses and Products; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of March 6, 2002, EPA announced a notice of the cancellation order for all O,S-dimethyl acetylphosphoramidothioate (or acephate) product registrations cited in voluntary cancellation requests by acephate registrants (Valent USA Corporation, Micro Flo Company LLC, Drexel Chemical Company, United Phosphorus, Inc., Whitmire Micro-Gen Research Labs, The Scotts Company, and Pursell Technologies, Inc.), and approved by EPA, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In that notice, Table 2 under **SUPPLEMENTARY INFORMATION** was incorrectly printed. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: By mail: Kimberly Nesci Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; fax number: (703) 308–8005; e-mail address: lowe.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 6, 2002 (67 FR 10193) (FRL–6824–9), EPA issued a notice of cancellation for certain O,S-dimethyl acetylphosphoramidothioate (or acephate) product registrations. On page 10195, Table 2 was incorrectly printed. The corrected Table 2 is printed below in its entirety.

TABLE 2.—ACEPHATE END USE PRODUCTS: USE DELETIONS AND USE OF EXISTING STOCKS

Company	EUP Registration Number	Effective Date of Use Deletions		Last Date for Sale and Distribution of Existing Stocks by the Registrant
		Indoor Residential	Turfgrass	
The Scotts Company	239–2406	N/A	No later than 10–31–02	12–31–02
	239–2436	N/A	No later than 10–31–02[1]	12–31–02
	239–2440	1–30–02	N/A	12–31–02
	239–2461	N/A	No later than 10–31–02[1]	12–31–02
	239–2632	N/A	No later than 10–31–02	12–31–02
Whitmire Micro-Gen	499–373	12–31–01	N/A	12–31–02
Drexel Chemical Co.	19713–495	1–11–02	N/A	12–31–02
	19713–497	N/A	1–28–02	12–31–02
Micro Flo Company	51036–236	N/A	12–31–01	12–31–02
	51036–252	N/A	1–28–02	12–31–02
	51036–237	12–31–01	N/A	12–31–02
	51036–337	N/A	12–31–01	12–31–02
Valent USA Corporation	59639–26	N/A	No later than 10–31–02	12–31–02
	59639–28	N/A	No later than 10–31–02	12–31–02

TABLE 2.—ACEPHATE END USE PRODUCTS: USE DELETIONS AND USE OF EXISTING STOCKS—Continued

Company	EUP Registration Number	Effective Date of Use Deletions		Last Date for Sale and Distribution of Existing Stocks by the Registrant
		Indoor Residential	Turfgrass	
	59639–31	1–11–02	N/A	12–31–02
	59639–33	N/A	No later than 10–31–02	12–31–02
	59639–87	N/A	No later than 10–31–02	12–31–02
	59639–91	N/A	No later than 10–31–02	12–31–02
United Phosphorus, Inc.	70506–1	N/A	No later than 10–31–02[1]	12–31–02
Pursell Technologies	73614–1	N/A	1–30–02	12–31–02

[1]Exception for harvester ant control on turfgrass does not apply to this product; other turfgrass exceptions do apply.

Lists of Subjects

Environmental protection, Cancellation, Pesticides and pests.

Dated: April 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–9072 Filed 4–12–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34255; FRL–6860–6]

Urea; Notice of Pesticide Report on FQPA Tolerance Reassessment Progress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice constitutes the Agency's report on the Food Quality Protection Act (FQPA) tolerance reassessment progress for urea, announces the Agency's tolerance reassessment decision, and releases the science assessment for tolerance reassessment decision and related documents supporting this decision to the public. The Agency's reassessment of dietary risk, including public exposure through food and drinking water as required by the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by FQPA, indicates that urea poses no risk concerns within the limits of the existing exemptions; therefore, no risk mitigation is needed. There will be no changes to the 78 urea exemptions from the requirement of a tolerance as a result of this reassessment decision. EPA views this action as noncontroversial and anticipates no adverse comments. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. EPA is counting 78 exemptions from the requirement of a tolerance as reassessments made toward the August 2002 review deadline.

DATES: Comments, identified by docket control number OPP–34255, must be received on or before May 15, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34255 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; and e-mail address: nevola.joseph]@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register** —Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of documents related to the Agency's report on FQPA tolerance reassessment progress for urea released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34255. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34255 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34255. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

III. Report on FQPA Tolerance Reassessment Progress

A new registration for urea was approved on August 23, 1995, with an approved label date of February 20, 1996, for use as an active ingredient (frost protectant) to reduce ice formation by ice-nucleating bacteria which are naturally present on leaf surfaces. Tolerance exemptions associated with that frost protectant use are codified in 40 CFR 180.1117. Exemptions associated with uses of urea as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, in pesticide formulations applied to growing crops only, and in pesticide formulations applied to animals are codified in 40 CFR 180.1001(c), (d), and (e), respectively. Therefore, exemptions associated with use of urea as an active and inert ingredient are subject to reassessment in accordance with FFDCA as amended by FQPA. FQPA requires EPA to re-evaluate existing tolerances/exemptions to ensure that children and other sensitive subpopulations are protected from pesticide risk.

The Agency has completed its assessment of the dietary risk of urea, and has determined that the level of dietary risk from exposure as a result of the currently registered uses of urea is not of concern. Therefore, no mitigation measures are needed and no further actions are warranted at this time. Urea does not pose unreasonable adverse effects to the environment when used according to its approved labeling. In addition, EPA finds that there is a reasonable certainty that no harm will result from aggregate exposure to the urea residue, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA considers a total of 78 exemptions from the requirement of a tolerance, 75 exemptions in 40 CFR 180.1117 and 3 exemptions in 180.1001, to be reassessed under FQPA. All of those 78 exemptions were found to meet the FQPA safety standard.

The risk assessment and other documents pertaining to the reassessment of the urea exemptions from a requirement of a tolerance are available on the Internet at http://www.epa.gov/pesticides/reregistration/status.htm and the public docket for viewing (see Unit I.B.2).

This notice of a tolerance reassessment for urea starts a 30–day public comment period during which the public is encouraged to submit comments on the Agency's risk assessment and tolerance exemption reassessment. The Agency is providing an opportunity, through this notice, for interested parties to comment in accordance with procedures described in Unit II. of this document. All comments will be carefully considered by the Agency. If any comment causes the Agency to revise its decision on reassessment of these exemptions from the requirement of a tolerance, EPA will publish notice of its amendment in the **Federal Register**.

The legal authority for tolerance reassessment is provided by FFDCA, as amended in 1996. Section 408(q) of FFDCA directs that:

> The Administrator shall review tolerances and exemptions for pesticide chemical residues in effect on the day before the date of the enactment of the FQPA of 1996, as expeditiously as practicable, assuring that--66% of such tolerances and exemptions are reviewed within 6 years (i.e., by August 3, 2002) of the date of enactment of such Act (i.e., on August 3, 1996), and--shall determine whether the tolerance or exemption meets the requirements of sections 408(b)(2) or (c)(2) and shall, by the deadline for the review of the tolerance or exemption, issue a regulation under section 408(d)(4) or (e)(1) to modify or revoke the tolerance or revoke the tolerance or exemption if the tolerance or exemption does not meet such requirements.

Under section 408 of the FFDCA, a tolerance may only be maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In section 408(b)(2), the term ''safe,'' with respect to a tolerance for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.

IV. Background

Urea is an active ingredient in only one active registration, where it is used

as a frost protectant. The exemptions associated with urea use as a frost protectant are found at 40 CFR 180.1117. For counting purposes, there are 75 commodities exempt from the requirement of a tolerance (squash, winter and summer, counts as two; cotton counts as three because it also includes hay and seed; and casaba, crenshaw, and persian melon, count as one entry).

Urea is also present in certain pesticide formulations as an inert ingredient where it is used as a stabilizer, an inhibitor, and as an adjuvant/intensifier for herbicides. One exemption for urea from the requirement of a tolerance when used as a stabilizer or inhibitor is found in 40 CFR 180.1001(c) for inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Another exemption for urea when used as an adjuvant/intensifier for herbicides is found in 40 CFR 180.1001(d) for inert (or occasionally active) ingredients in pesticide formulations applied to growing crops only. In addition, an exemption for urea when used as a stabilizer or inhibitor is found in 40 CFR 180.1001(e) for inert (or occasionally active) ingredients in pesticide formulations applied to animals.

Urea is a naturally occurring compound in humans and is approved for several therapeutic uses in humans with relatively few toxicities. In addition, urea is considered Generally Recognized As Safe (GRAS) by the U.S. Food and Drug Administration (FDA) for use in food. Urea is included in ''Direct Food Substances Affirmed as Generally Recognized as Safe'' (21 CFR 184.1923), where the affirmation of GRAS as a direct human food ingredient is based on current good manufacturing practice and conditions of use as a formulation and fermentation aid.

EPA has reaffirmed data waivers granted for all subchronic, chronic, developmental, reproduction, mutagenicity, and metabolism studies based on available data from literature studies concerning urea. A recent search of the published scientific literature concerning urea since 1980 showed no basis for toxicological concern.

V. Use Summary

Urea was registered by EPA in 1995 for use as a frost protectant pesticide under the trade name Enfrost. Enfrost is a 43% liquid formulation of urea that can be applied commercially to a wide variety of field crops, vegetables, fruit trees and ornamentals to reduce frost damage. There are currently no residential uses for urea as a pesticide product. Enfrost is the only currently registered pesticide product containing urea as an active ingredient. Enfrost provides frost protection by modifying the protein produced by ice-nucleating bacteria. Enfrost has not been actively produced or sold by the registrant, Entek Corporation, since 1995. However, the registrant wishes to maintain active registration of Enfrost for potential future production and use.

In addition to its use as a frost protectant, urea is used as an inert pesticide ingredient as a stabilizer, inhibitor, or intensifier. Also, several million tons of urea are produced annually for use in fertilizer and as an animal feed supplement. Moreover, urea is used in the manufacture of dyes, fire retardant paints, plasticizers, and stabilizers for explosives.

VI. Hazard Characterization

With the exception of six acute toxicity studies submitted by the registrant, the urea toxicity data base is comprised of the available literature data. These data are considered by the Agency to be sufficient to assess the potential hazard to humans, including special sensitivity of infants and children.

1. *Acute toxicity*. The six acute toxicological studies indicate that the frost protectorant is a slight eye irritant and has a low toxicity to animals when administered via the oral, dermal, or inhalation routes of exposure.

2. *Subchronic toxicity*. Urea produced no severe toxicity in dogs injected subcutaneously with 30–40 milliliters/kilograms/day (mL/kg/day) of 10% urea solution for 45 days. With plasma levels ranging from 200–700 mg/100 mL (10 to 30–fold above normal), the only clinical symptoms observed were drowsiness and diuresis. Necropsy indicated no adverse organ pathology.

3. *Chronic toxicity and carcinogenicity*. Animal studies provide no evidence of adverse chronic or carcinogenic effects. One year feeding studies in male and female C57B1/6 mice and Fisher 344 rats reported no evidence of treatment-related cancer at doses up to 4.5% of the diet. Studies in the susceptible mouse strain (Strain A) also indicate no evidence of urea tumorigenicity.

4. *Developmental and reproductive toxicity*. In a developmental toxicity study, pregnant Wistar rats produced healthy offspring with no reported evidence of teratogenic effects. A study of pregnant cows receiving 0.44 grams/kilograms urea showed no effects on reproductive performance nor were the calves affected.

Urea has also been evaluated in monkeys for its ability to induce abortion. The mode of action is similar to the hyperosmolar effect of large doses of hypertonic saline and dextrose. However, such high intrauterine exposures would not be expected to occur from exposure to urea used as a frost protectant or inert pesticide ingredient. Urea is currently classified by FDA in category C for therapeutic use, ''Safety for use during pregnancy has not been established.

55. *Absorption, metabolism, and excretion*. Urea is extremely soluble in water and oral doses are rapidly absorbed and distributed in humans. Urea is a normal human body constituent and is constantly being produced through amino acid and protein metabolism where urea is formed through a cyclic mechanism.

Urea has long been used as a dietary supplement for ruminants as a source of nitrogen for protein synthesis. Urea nitrogen can also contribute part of the amino acid requirements in humans. Utilization of urea nitrogen has been demonstrated both in malnourished children and adults.

6. *Therapeutic uses*. Urea is approved for several therapeutic uses in humans with relatively few toxicities. Urea is used primarily as an osmotic agent for inducing diuresis and reducing intraoccular and intracranial pressure. Urea has also been used as a topical anesthetic for the treatment of mouth and throat inflammation (10-15% urea gel, liquid or solution), to debride necrotic and infected tissues, i.e. fingernails and toenails. It is also used in the treatment of sickle-cell anemia and to ammoniate dentrifices as well as a basic ingredient in the synthesis of medically important compounds such as barbiturates and urethanes.

7. *FQPA considerations*. EPA evaluated the available hazard and exposure data for urea and concluded that the data provide no indication of increased sensitivity of infants and children from exposure to urea. Due to the expected low toxicity of urea, the Agency has not used a safety factor analysis to assess the risk. For the same reasons, the additional ten-fold (FQPA 10X) safety factor to account for enhanced sensitivity of infants and children is not necessary.

VII. Exposure Assessment

Based on the hazard assessment of urea, exposures to this compound resulting from reasonably anticipated patterns of usage present a reasonable certainty of no harm to human health. Given the low toxicity of urea, a more detailed assessment of risks resulting

from exposure to urea, when used either as a frost protectant or pesticide inert ingredient, is not necessary.

VIII. Environmental Fate and Transport

Available data from literature reviews show that urea degrades rapidly in most soils, generally hydrolyzed to ammonium through soil urease activity. In various soils, the hydrolysis may near completion within 24 hours; however, the rate of hydrolysis can be much slower depending upon soil type, moisture content, and urea formulation. Soil adsorption studies show that urea adsorbs very weakly to soil; therefore, leaching is possible. Ultimate urea degradation produces ammonia and carbon dioxide as volatile products. Biodegradation is expected to be the major fate process in the aquatic ecosystem. The rate of biodegradation generally decreases with decreasing temperatures. Naturally-occurring phytoplankton increases the degradation rate because phytoplankton use urea as a nitrogen source. In phytoplankton-rich waters, degradation occurs much faster in sunlight than in the dark. Abiotic hydrolysis of urea occurs very slowly in relation to biotic hydrolysis.

IX. Summary of Risk Assessment Findings

From the available animal studies and other data, EPA has concluded that urea exhibits a low toxicity and exposures to urea used either as an active or inert pesticide ingredient present a reasonable certainty of no harm to human health. The Agency's analysis of extensive toxicological data in numerous species supports the 1995 decision to grant permanent exemptions from the requirement of a tolerance for residues of the frost protectant when used before harvest in the production of raw agricultural commodities.

X. Tolerance Reassessment Summary

Based on reevaluation of existing data, EPA believes there is sufficient basis to maintain exemption from the requirement of a tolerance for residues of the frost protectant urea when used before harvest in the production of the raw agricultural commodities listed in 40 CFR 180.1117 and inert uses of urea listed in 40 CFR 180.1001.

UREA INERT INGREDIENT EXEMPTIONS

Inert Ingredient	Current Tolerance	Reassessment Decision	Uses
Exemption listed in 40 CFR 180.1001(c) Urea	Exempt	Same	Stabilizer, inhibitor
Exemption listed in 40 CFR 180.1001(d) Urea (CAS 57-13-6)	Exempt	Same	Adjuvant/intensifier for herbicides
Exemption listed in 40 CFR 180.1001(e) Urea	Exempt	Same	Stabilizer, inhibitor

UREA ACTIVE INGREDIENT EXEMPTIONS (40 CFR 180.1117)

Commodity	Current Tolerance	Reassessment Decision	Corrected Commodity Definition
Alfalfa	Exempt	Same	
Almonds	Exempt	Same	Almond
Apples	Exempt	Same	Apple
Apricots	Exempt	Same	Apricot
Artichokes	Exempt	Same	Artichoke, globe
Asparagus	Exempt	Same	
Avocados	Exempt	Same	Avocado
Beans	Exempt	Same	Bean
Bell peppers	Exempt	Same	Pepper, bell
Blackberries	Exempt	Same	Blackberry
Blueberries	Exempt	Same	Blueberry
Boysenberries	Exempt	Same	Boysenberry
Broccoli	Exempt	Same	
Brussels sprouts	Exempt	Same	
Caneberries	Exempt	Same	Caneberry
Canola	Exempt	Same	

UREA ACTIVE INGREDIENT EXEMPTIONS (40 CFR 180.1117)—Continued

Commodity	Current Tolerance	Reassessment Decision	Corrected Commodity Definition
Cantaloupes	Exempt	Same	Cantaloupe
Carrots	Exempt	Same	Carrot
Cauliflower	Exempt	Same	
Casaba	Exempt	Same	Muskmelon
Celery	Exempt	Same	
Cherries	Exempt	Same	Cherry, sweet and cherry, tart
Chili peppers	Exempt	Same	Pepper, nonbell
Chinese cabbage (bok choy, napa)	Exempt	Same	Cabbage, Chinese, bok choy Cabbage, Chinese, napa
Cooking peppers	Exempt	Same	Pepper, nonbell sweet
Corn	Exempt	Same	
Cotton	Exempt	Same	
Crenshaw	Exempt	Same	Muskmelon
Cucumbers	Exempt	Same	Cucumber
Figs	Exempt	Same	Fig
Grapefruit	Exempt	Same	
Grapes	Exempt	Same	Grape
Honeydew melon	Exempt	Same	
Hops	Exempt	Same	Hop, dried cones
Kiwifruit	Exempt	Same	
Kohlrabi	Exempt	Same	
Lemons	Exempt	Same	Lemon
Lentils	Exempt	Same	Lentil
Lettuce	Exempt	Same	
Limes	Exempt	Same	Lime
Macadamia nuts	Exempt	Same	Nut, macadamia
Musk melon	Exempt	Same	Muskmelon
Nectarines	Exempt	Same	Nectarine
Olives	Exempt	Same	Olive
Onions	Exempt	Same	Onion, dry bulb Onion, green
Oranges	Exempt	Same	Orange, sweet
Peaches	Exempt	Same	Peach
Pears	Exempt	Same	Pear
Peanuts	Exempt	Same	Peanut
Peas	Exempt	Same	Pea
Persian melon	Exempt	Same	Muskmelon
Pistachios	Exempt	Same	Pistachio

UREA ACTIVE INGREDIENT EXEMPTIONS (40 CFR 180.1117)—Continued

Commodity	Current Tolerance	Reassessment Decision	Corrected Commodity Definition
Plums	Exempt	Same	Plum
Potatoes	Exempt	Same	Potato
Pumpkin	Exempt	Same	
Prunes	Exempt	Same	Plum, prune
Radish	Exempt	Same	
Raspberries	Exempt	Same	Raspberry
Rice	Exempt	Same	
Safflower	Exempt	Same	
Sorghum	Exempt	Same	Sorghum, grain
Spinach	Exempt	Same	
Spinach (New Zealand)	Exempt	Same	Spinach, New Zealand
Squash (winter and summer)	Exempt	Same	Squash, summer Squash, winter
Strawberries	Exempt	Same	Strawberry
Sugar beets	Exempt	Same	Beet, sugar
Sunflower	Exempt	Same	
Sweet pepper	Exempt	Same	Pepper, nonbell, sweet
Table beets	Exempt	Same	Beet, garden
Tangerines	Exempt	Same	Tangerine
Tomatoes	Exempt	Same	Tomato
Walnuts	Exempt	Same	Walnut
Watermelon	Exempt	Same	
Zucchini	Exempt	Same	Squash, summer

List of Subjects

Environmental protection.

Dated: March 28, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–9071 Filed 4–12–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7171–2]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of nine (9) *de minimis* parties for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania.

DATES: Comments must be provided on or before May 15, 2002.

ADDRESSES: Comments should be addressed to Suzanne Canning, Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joan A. Johnson (3RC41), 215/814–2619, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 122(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. The proposed agreement has been reviewed and approved by the United States Department of Justice. The following *de minimis* parties have executed signature

pages, consenting to participate in this settlement: BAE Systems (on behalf of American Electronics Laboratories), Boekel Industries, AVX Corporation (on behalf of Elco Corporation), Irvins Tinware (on behalf of Ervins Crafts), K–D Tool Manufacturing Corporation, Maida Development Company, McHugh Railroad Maintenance Equipment Company, Photofabrication Chemical & Equipment Company, Inc., and R & E Martin.

The nine (9) settling parties collectively have agreed to pay $645,749 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Monies collected from the *de minimis* parties will be applied towards past and future response costs incurred by EPA or PRPs performing work at or in connection with the Site. The settlement includes a 60% premium to cover the risk of cost overruns or increased costs to address conditions at the Site previously unknown to EPA but discovered after the effective date of the Consent Order. The settlement also includes a reservation of rights by EPA, pursuant to which EPA reserves its rights to seek recovery from the settling *de minimis* parties of response costs incurred by EPA in connection with the Site to the extent such costs exceed $25 million.

EPA is entering into this agreement under the authority of section 122(g) of CERCLA, 42 U.S.C. 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with potentially responsible parties in connection with the Malvern TCE Superfund Site, each of whom is responsible for .75 percent or less of the volume of hazardous substance sent to the Site. As part of this *de minimis* settlement, EPA will grant the nine settling *de minimis* parties a covenant not to sue or take administrative action against any of the nine settling PRPs for reimbursement of response costs or injunctive relief pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, or for injunctive relief pursuant to section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, with regard to the Site. EPA issued this settlement offer to the *de minimis* parties on May 29, 2001.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from Joan A. Johnson, U.S. Environmental Protection Agency, Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, or by contacting Joan A. Johnson at (215) 814–2619.

Dated: March 12, 2002.

Rebecca W. Hanmer,

Acting Regional Administrator, Region III.

[FR Doc. 02–9069 Filed 4–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, April 18, 2002, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Notice of Proposed Rulemaking on 2002 Modifications to the Administrative Fines Program.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–9162 Filed 4–11–02; 10:43 am]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE & TIME: Friday, May 3, 2002 at 8:30 a.m., Saturday, May 4, 2002 at 9 a.m.

PLACE: Westin Westminster Hotel, 10600 Westminster Boulevard, Westminster, CO 80020.

NAME: Federal Election Commission Election Administration Advisory Panel.

STATUS: The Advisory Panel Meeting is open to the public, dependent on available space.

In accordance with the provisions of the Federal Advisory Panel Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the 2002 Advisory Panel meeting.

ITEMS TO BE DISCUSSED:

Election Case Law: Lesson from the 2000 Election; Update on Office of Election Administration Projects in 2002; A Report from the Federal Voting Assistance Program; Reports from both the Election Crimes Branch and the Voting Section of the Civil Rights Division of the U.S. Department of Justice; State Vote Counting Laws and Procedures; 2002 Redistricting; Using Statewide Voter Registration databases.

PURPOSE OF MEETING:

The Panel will present its views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Office of Election Administration for its future program development.

Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, Panel Chair may allow public presentation or oral statements at the meeting.

PERSON TO CONTACT FOR INFORMATION: Ms. Penelope Bonsall, Director, Office of Election Administration. Telephone: (202) 694–1095.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–9163 Filed 4–11–02; 10:43 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

SUMMARY: This notice corrects a notice (FR Doc. 02-8375 published on pages 16752-16753 of the Issue for Monday, April 8, 2002.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's

public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 14, 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report

1. *Report title:* Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks

Agency form number: Reg H–5

OMB control number: 7100–0261

Frequency: Aggregate report, quarterly; policy statement, annually.

Reporters: state member banks

Annual reporting hours: 21,060 hours

Estimated average hours per response: Aggregate report, 5 hours; policy statement, 20 hours

Number of respondents: 976

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1828(o)) and is not given confidential treatment.

Abstract: State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan–to–value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Board of Governors of the Federal Reserve System, April 9, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–9007 Filed 4–12–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Notice of Public Meeting and Intent To Prepare an Environmental Assessment

The General Services Administration (GSA) announces its intent to prepare an Environmental Assessment (EA) for the proposed development of a new Census Bureau building at the Suitland Federal Center (SFC), and to conduct a public meeting to discuss the project. The proposed Census Bureau building will consolidate and replace the Census Bureau's current office space located at its existing headquarters in Federal Office Building-3 (F.O.B–3) at the SFC, and at overflow facilities in F.O.B.–4 at the SFC and at other locations in Prince George's County. GSA plans to build the new Census Bureau facility because the space requirements of the Census Bureau exceed the current capacity at their existing headquarters building and because working conditions at the existing Census Bureau facilities are inadequate.

GSA will prepare the EA pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), Section 106 of the National Historic Preservation Act of 1966, as amended, and in accordance with GSA's environmental policies and procedures set forth in the NEPA Desk Guide (GSA Order ADM 1095.1F Environmental Considerations in Decisionmaking). The environmental assessment will determine whether GSA's decision to build a new Census Bureau Building at the SFC would significantly affect the quality of the human environment, and hence require an environmental impact statement (EIS), or a finding of no significant impact (FONSI) under NEPA.

The Proposed Action is the development of new and improved space to house the Census Bureau. The project alternatives will include (A) a new building for the Census Bureau and demolition of FOB–3, (B) a new building for the Census Bureau that allows FOB–3 to remain for another use, and (C) a no action alternative that would not include a new building for the Census Bureau.

The EA will evaluate the effects of the project alternatives on land use, socio-economic, transportation, cultural, and natural resources. The EA will consider the potential for short-term, long-term, and cumulative impacts.

The Census Bureau project represents Phase 2 of the SFC development plan. As such, the EA will be tiered from the

Final EIS for the Programmatic Development Plan and Phase I Implementation prepared by GSA in September 2001.

A public meeting will be held to determine the significant issues related to development of the new Census Bureau building and the long-term use of the Suitland Federal Center. The meeting will serve as part of the formal environmental review/scoping process for the preparation of the EA. It is important that Federal, regional, state, county and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during preparation of the EA. The public and review agencies are also encouraged to submit written comments on the potential impacts of the proposed Census Bureau development plan. Public comments received will be considered for determining the issues to be assessed in the environmental document. The public and review agencies are encouraged to provide additional comments once the EA is released.

The public scoping meeting will be held: Wednesday, May 1st at 7 p.m. at the Suitland Federal Center, Community Room, 4211 Suitland Road, Suitland, Maryland.

Adequate signs will be posted on the building to direct meeting participants. The meeting will begin with a brief presentation of the project and the environmental impact assessment process. After the presentation, GSA representatives will be available to receive comments from the public regarding issues of concern and the scope of the EA. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the general public are invited and encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, environmental review/scoping comments should clearly describe specific issues or topics that the community believes the EA should address. All written comments regarding the proposed project must be postmarked no later than May 12, 2002 to: General Services Administration, Attn: Mr. Jag Bhargava, Project Executive, Capital Development Division, 7th and D Streets, SW., Room 2110, Washington, DC 20407.

For further information please contact: Mr. Jag Bhargava, General Services Administration (202–708–6944) E-mail: *jag.bhargava@gsa.gov*

Dated: April 8, 2002.

Jag Bhargava,

Project Executive.

[FR Doc. 02–8976 Filed 4–12–02; 8:45 am]

BILLING CODE 6820–14–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FMR B–3]

Motor Vehicle Management

This notice contains GSA Bulletin FMR B–3 which addresses the use of tobacco products in motor vehicles owned or leased by the Federal Government. The text of the bulletin follows:

To: Heads of Federal Agencies.

Subject: Use of Tobacco Products in Motor Vehicles Owned or Leased by the Federal Government.

1. *What is the purpose of this bulletin?* This bulletin provides guidance to Executive agencies concerning the use of tobacco products in motor vehicles owned or leased by the Federal government. Other Federal agencies are also encouraged to consider this guidance.

2. *What is the effective date of this bulletin?* This bulletin is effective April 15, 2002.

3. *When does this bulletin expire?* This bulletin will remain in effect until specifically cancelled.

4. *What is the background?*

a. In 1993, the General Services Administration (GSA) Fleet Program prohibited the use of tobacco products in GSA Fleet vehicles because of the potential health hazards associated with the use of these products and the negative residual effects of tobacco use on GSA Fleet vehicles.

b. The Federal Fleet Policy Council (FEDFLEET) comprised of national level Federal agency fleet managers requested GSA's Office of Governmentwide Policy, Federal Vehicle Policy Division (MTV) to develop a recommendation regarding the use of tobacco products in motor vehicles owned or leased by the Federal government. Many agencies already prohibit the use of tobacco products in their vehicles; therefore, FEDFLEET recommended a policy that would apply to the entire Federal fleet.

5. *What is the recommended policy we are encouraged to follow when issuing guidance on the use of tobacco products in motor vehicles owned or leased by the Federal government?* Agencies are encouraged to:

a. Prohibit the use of tobacco products in motor vehicles owned or leased by the Agency.

b. Begin discussions with employee unions and organizations if required by union agreements to prohibit the use of tobacco products in such motor vehicles.

c. Develop appropriate policy regarding disciplinary action to be taken against employees violating this prohibition.

6. *Who should we contact for further information and/or to direct comments regarding the issue of prohibiting the use of tobacco products in motor vehicles owned or leased by the Federal government?*

General Services Administration, Office of Governmentwide Policy, Federal Vehicle Policy Division (MTV), Washington, DC 20405, Telephone Number: 202–501–1777, E-mail Address: *vehicle.policy@gsa.gov.*

Dated: April 8, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 02–9003 Filed 4–12–02; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meetings: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of two meetings of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. An education conference, *Genetic Testing and Public Policy: Preparing Health Professionals,* will be held from 8:30 a.m. to 5 p.m. on May 13, 2002. SACGT's thirteenth meeting will be held from 9 a.m. to 5:30 p.m. on May 14, 2002 and 8 a.m. to 2:30 p.m. on May 15, 2002. Both meetings will be held at the Hyatt Regency, 300 Light Street, Baltimore, MD and are free and open to the public with attendance limited to space available. Pre-registration is encouraged for the May 13 education conference. Online registration for the May 13 conference is available at *http://www4.od.nih.gov/oba/sacgt.htm* or by calling Abbe Smith at 301–897–7423. A catered luncheon is offered on May 13 at a cost of $30 and requires advance registration.

The one-day education conference will consider the challenges of integrating genetic testing into clinical and public health practice for the wide range of health professionals likely to be affected by this expanding field.

Through a combination of plenary presentations and panel discussions, the conference will explore the integration of genetics into primary care and discuss the various roles of healthcare providers in the provision of genetics services. Afternoon focus groups will concentrate on several different areas of genetics education, training, and integration. Conference participants will be asked to consider a number of public policy questions of interest to SACGT, including how are health professions schools responding to changes and challenges brought about by genetics and genetic testing; are future health professionals being taught what they need to know to integrate new health technologies and services into the clinical and public health settings; are current health professionals, who were trained long long before the explosion of genetics knowledge, receiving the training they need to continue to practice effectively; are they being taught about the proper use and interpretation of genetic tests and about their ethical, legal, and social implications; are the revolutionary advances in genetics having an equally revolutionary effect on our educational methods; what changes are already underway; are they sufficient; are they occurring quickly enough; is government doing as much as it should do? On the following day during its regular Committee meeting, SACGT will consider these issues and develop its recommendations to the Secretary.

Reviewing the outcomes of the SACGT Education Conference will be the Committee's first order of business at its May 14–15 meeting. In addition, four of the SACGT work groups will be presenting reports to the Committee: The ACCESS Work Group will present a draft report on billing and reimbursement for genetic education and counseling services; the Informed Consent/Institutional Review Board Work Group will present its revised recommendations on decision making and informed consent for clinical and public health genetic tests; the Data Work Group will present three case studies on the development and clinical application of a genetic test; and the Rate Disease Work Group will present a report on genetic testing for rare diseases. Presentations will also be made on the development of a ''Frequently Asked Questions'' document on Clinical Laboratory Improvement Amendments certification and the Food and Drug Administration's progress in the development in the development of a pre-market review of genetic tests. Time will be provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following Web site: *http://www4.od.nih.gov/oba/sacgt/htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *sc112@nih.gov.* The SACGT office is located at 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Dated: April 5, 2002.

Sarah Carr,

Executive Secretary, Secretary's Advisory Committee on Genetic Testing.

[FR Doc. 02–9092 Filed 4–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Action Plan To Assure the Appropriate Use of Therapeutic Agents in the Elderly: Notice of Opportunity for Public Comment

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) solicits written comments on the key elements of a national action plan to assure the appropriate use of therapeutic agents in the elderly.

DATES: Written comments may be submitted on or before 5:00 p.m. E.S.T. on May 22, 2002.

ADDRESSES: Written comments should be sent to Debra C. Nichols, M.D., M.P.H., DHHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, room 738–G, 200 Independence Ave., SW., Washington, DC 20201, (202) 205–4872 (telephone), 202–205–9478 (facsimile). Comments also may be submitted electronically to *dnichols@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Debra Nichols, M.D., M.P.H. DHHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, room 738–G, 200 Independence Ave., SW., Washington, DC 20201, (202) 205–4872.

SUPPLEMENTARY INFORMATION:

Background

The Elderly are at increased risk of complications from the effects of therapeutic agents. These risks are caused by the use of multiple, concurrent medications, the use of inappropriate medication and the underuse of needed medication.

Management of this problem will require the coordinated efforts of both federal and private sectors. Provider behavior must be modified through education, the use of monitoring systems and patient and caregiver empowerment. The most important strategies that the nation can use to fight this problem must be identified.

Written Comments

In preparation for the development of a national action plan to assure the appropriate use of therapeutic agents in the elderly in the United States, comments are welcome from all interested stakeholders.

Comments will be most useful if they include the following information:

(1) What you consider to be the three to five most important priorities for assuring the appropriate use of therapeutic agents in the elderly in the United States.

(2) How, as a nation, we should pursue these strategies.

(3) Your views on the most effective ways to address disparities among different segments of the population.

(4) (If applicable) A short summary of activities that your organization is engaged in or plans to engage in to assure the appropriate use of therapeutic agents in the elderly. Submitted information may become part of a publicly accessible website information center, or be otherwise made available.

Dated: April 9, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–9048 Filed 4–12–02; 8:45 am]

BILLING CODE 4150–32–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02046]

Cooperative Agreement for a Research Program To Determine the Incidence of Emerging Human Transmissible Spongiform Encephalopathies in the United States; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to determine the incidence of emerging human transmissible spongiform encephalopathies (TSE)in the United States. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of the program is to enhance national surveillance for TSE or prion diseases. The objectives are to (1) develop new diagnostic techniques; (2) facilitate laboratory investigation of new emerging TSE and (3) develop a research program to determine the incidence of potential TSE or prion diseases in the United States. Go to the website in Part J. of this announcement for more background information.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations. Faith-Based organizations are eligible for this award.

Applicant staff must have certification to practice neuropathology (a medical field focusing on examination and study of brain tissues) in the United States or certification to practice pathology (or neurology) in the United States and show, in their curriculum vitae, the extent of their experiences in neuropathology.

Note: Title II of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $750,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop a collaborative network of medical professionals (i.e. pathologists, neuropathologists, etc.) to report suspected variant Creutzfeldt-Jakob Disease (CJD) cases and collect data on physician-diagnosed TSE.

b. Develop a plan to confirm the diagnosis of TSE and characterize infecting prions to monitor the emergence of novel types of TSE such as variant (CJD).

c. Collaborate with state and local health departments and other centers to establish effective ways of increasing state-of-the art diagnoses, including autopsy rates among physician-diagnosed cases of TSE.

d. Develop a system for the collection of critical epidemiologic information on the cases confirmed with TSE.

e. Develop research methodologies to assess the relationship, if any, of chronic wasting disease of deer and elk to human TSE.

f. Provide training on TSE, as needed, such as clinical and neuropathologic manifestations of variant CJD, to medical professionals (*i.e.* neurologists, pathologists, *etc.*).

g. Disseminate the results of research findings.

2. CDC Activities

a. Provide assistance in the dissemination of results and other technical assistance as required.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Letter of Intent (LOI)

An LOI is required for this program. The narrative should be no more than two single-spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to plan for the review, and should include the following information (1) the program announcement number 02046 (2) name and address of institution and (3) name, address and telephone number of contact person. Notification can be provided by facsimile, postal mail, or electronic mail (e-mail).

Application

Use the information in the Program Requirements (particularly in the Recipient Activities), Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one-inch margins, and unreduced fonts.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 30, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS–398). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm,* or in the application kit.

On or before June 15, 2002, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Plan (30 points)

The extent to which the applicant presents a detailed operational plan for continuing and conducting the project and which clearly and appropriately addresses all recipient activities. Extent to which the applicant demonstrates existing collaborations with a network of neuropathologists and general pathologists in the United States and experience in testing brain tissues from a large number of confirmed CJD cases reported each year in the United States.

2. Objectives (10 points)

The extent to which the applicant describes specific objectives for the continuation of the project which are consistent with the purpose of this program and which are measurable and time-phased.

3. Methods (15 points)

The extent to which the applicant clearly identifies specific assigned responsibilities for all key professional personnel assigned to carry out each of the recipient activities. Extent to which the plan clearly describes the applicant's technical approach/methods for ensuring the completeness and reporting of epidemiologic information on the cases evaluated at the Pathology Center and extent to which the plan is adequate to accomplish the purpose. Extent to which the applicant describes specific plans for the continuation of activities that are appropriate for the purpose of the project. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) the proposed plan for the inclusion of both sexes and racial and ethnic minorities, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

4. Capacity (25 points)

The degree to which the applicant demonstrates existing laboratory capacity to perform state-of-the art diagnostic tests for human TSE and characterize infecting prions. Extent to which the applicant can document past experience and achievement in successfully completing the types of recipient activities necessary for achieving the purpose of this project. The degree to which the applicant demonstrates the ability to successfully collaborate with state and local health departments and professional associations whose members are involved in the care and diagnosis of CJD patients such as the American Academy of Neurology, the American Association of Neuropathologists, and the United States and Canadian Academy of Pathologists.

5. Evaluation (10 points)

The extent to which the applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving the purpose of the project.

6. Measures of Effectiveness (10 points)

The extent the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Are the measures objective/quantitative and do they measure the intended outcome?

7. Budget (not scored)

The extent to which the line-item budget is detailed, clearly justified, consistent with the purpose and objectives of this program, and outlines how the budget relates to the Recipient Activities as listed under the ''Program Requirements'' section of this program announcement.

8. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirement

Provide CDC with an original plus two copies of the following:

1. Progress report (annually)
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. Sections 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain additional information, contact: Merlin Williams, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, M/S K75, Atlanta, GA 30341–4146. Telephone number: (770)488–2765. Fax Number: (770)488–2670. E-mail address: *mqw6@cdc.gov.*

For program technical assistance, contact: Dr. Ermias Belay, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop A–39, Atlanta, GA 30333. Telephone number:

404–639–3091. Fax Number: 404–639–3838. E-mail address: *EBelay@cdc.gov.*

Dated: April 8, 2002.

Sandra R. Manning,

CFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–9010 Filed 4–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Draft Technical Report of a Feasibility Study of the Health Consequences to the American Population of Nuclear Weapons Tests Conducted by the United States and Other Nations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability and request for comments.

SUMMARY: In 1998, the Congress requested that the Department of Health and Human Services (HHS) conduct an initial assessment of the feasibility and public health implications of a detailed study of the health impact on the American people of radioactive fallout from the testing of nuclear weapons. This request resulted in a joint project by scientists at the Centers for Disease Control and Prevention (CDC) and at the National Cancer Institute (NCI).

This notice announces that a 2-volume Technical Report providing details on the scientific methods and conclusions of this feasibility project is now available for public comment. This project has, for the first time, estimated preliminary doses to representative persons in all counties of the contiguous United States for a set of important radionuclides produced as a result of nuclear weapons testing from 1951 through 1962 by the United States and other nations. The work that has now been completed demonstrates that it is feasible to conduct a more detailed study of the health impact on the American population as a result of exposure to radioactive fallout from the testing of nuclear weapons in the United States and abroad.

However, significant resources would be required to implement this project, and careful consideration should be given to public health priorities before embarking on this path. To assist in the process of deciding about future fallout-related work, this report contains five different options for consideration.

DATES: To be considered, comments on this draft Technical Report must be received August 13, 2002. Comments received after the close of the public comment period will be considered at the discretion of CDC on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft Technical Report should be sent to the Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, Mail Stop E–39, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone (404) 498–1800, e-mail NTS and Global Fallout Report@cdc.gov. Written comments regarding the draft Technical Report should be sent to the same address. Because of its large size, CDC reserves the right to provide only one copy of the draft Technical Report free of charge to a requester. The document may also be accessed via the Internet at *http://www.cdc.gov/nceh/radiation/default.htm.*

Written comments submitted in response to this notice should bear the title of the report, ''A Feasibility Study of the Health Consequences to the American Population of Nuclear Weapons Tests Conducted by the United States and Other Nations.'' Because all public comments regarding this draft Technical Report will be available for inspection, no confidential business information or personal medical information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, Mail Stop E–39, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: Before 1963, the United States and other countries tested more than 500 nuclear weapons in the atmosphere. Each of these tests inserted radioactive debris, commonly known as fallout, into the atmosphere. Depending on the size and type of weapon detonated, some of this fallout traveled great distances before depositing on the earth and exposing people to radiation. Any person living in the contiguous United States since 1951 has been exposed to radioactive fallout, and all organs and tissues of the body have received some radiation exposure. On the basis of the preliminary estimates of dose and risk developed in this feasibility study, fallout radiation appears to have the greatest impact on risks for thyroid tumors. Risks for leukemia would be lower. Risk for cancers of other organs or tissues could be assessed as well, but because of the smaller amount of information available about radiation-associated health effects and the lower doses to most organs, the uncertainties associated with these estimates would be extremely large.

Dated: April 8, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–9011 Filed 4–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4042–N]

RIN 0938–ZA32

Medicare Program; Solicitation for Proposals for Medicare Preferred Provider Organization (PPO) Demonstrations in the Medicare+Choice Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice for solicitation of proposals.

SUMMARY: This notice informs interested parties of an opportunity to apply for a cooperative agreement to develop a Medicare Preferred Provider Organization (PPO) Demonstration. We are interested in making the PPO health care option, which has been successful in non-Medicare markets, more widely available to people with Medicare. Our objective is to introduce more variety into the Medicare+Choice program so that Medicare beneficiaries have broader choice and more options available. We intend to use a competitive application process to select several organizations to develop PPO demonstrations beginning January 1, 2003.

DATES: Applications will be considered timely if we receive them on or before May 30, 2002.

ADDRESSES: Applications should be mailed to the following address: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Beneficiary Choices, Demonstration and Data Analysis Group, Division of Demonstration Programs, Attn: Ron

Deacon, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Please refer to file code CMS–4042–N on the application. Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for panel review, will be considered late applications.

FOR FURTHER INFORMATION CONTACT: Ron Deacon, CMS Project Officer, at (410) 786–6622, or *ppodemo@cms.hhs.gov.* General information regarding this initiative is available on CMS's web site (*www.hcfa.gov/research/ppodemo.htm*).

SUPPLEMENTARY INFORMATION:

Informational Meeting

We invite individuals from organizations interested in responding to this solicitation to attend an informational meeting to be held at CMS headquarters in Baltimore on April 24, 2002 from 1 p.m. to 4 p.m. e.d.t. We will answer questions and provide guidance for the application process. Telephone call-in will be available for organizations unable to attend the meeting. More information on this meeting will be available at our web site (*http:www.hcfa.gov/research/ppodemo.htm*). Please send any questions in advance to *ppodemo@cms.hhs.gov.* We will answer the questions at the informational meeting.

I. Background

A. Legislative Background

Section 402(a)(1)(A) of the Social Security Amendments of 1967 (Pub. L. 90–248), 42 U.S.C. 1395b–1(a)(1)(A), authorizes the Secretary to develop and engage in demonstrations ''to determine whether, and if so which, changes in methods of payment or reimbursement * * * for health care and services under health programs established by the Social Security Act, including a change to methods based on negotiated rates, would have the effect of increasing efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services. * * *''

Under section 402(b) of the Social Security Act Amendments of 1967, the Secretary is authorized to waive requirements in title XVIII that relate to reimbursement and payment in order to carry out demonstrations authorized under section 402(a) of the Social Security Act Amendments of 1967.

B. Problem

Medicare currently provides a choice of alternatives to fee-for-service health care through its Medicare+Choice (M+C) program. While the program has grown since its introduction in the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, plans representing a wide range of options have not entered the program. The Congress intended that the BBA give people with Medicare the opportunity to choose, from a variety of private health plan options, the health care plan that best suits their needs and preferences. The options anticipated were coordinated care plans, including preferred provider organizations (PPOs) and health maintenance organizations (HMOs) (including HMOs with a point-of-service (POS) option); unrestricted private fee-for-service plans; provider-sponsored organizations (PSOs); and medical savings accounts. Currently, of the 179 M+C contracts, only 2 are PPO contracts, 1 is a PSO contract, and 2 are private fee-for-service plan contracts; the remainder are HMO contracts (a relatively small number of these offer a POS option).

Over the long term, the M+C program has the potential to reduce costs because of its strong emphasis on coordinated care and preventive health. Moreover, because of its risk-based capitation payment system, the program provides increased incentives over fee-for-service for plans to control and even decrease the rate of growth in health care expenditures. Several proposed Medicare reform initiatives include financial components that encourage competition among health care providers and plans to provide the best choice for Medicare beneficiaries and the best price to Medicare. Today, participation by plans nationally or locally in M+C is not sufficient to foster the positive effects of competition in some areas.

People with Medicare currently have access to fewer health plan models or choices than consumers with commercial insurance. Often, when individuals become eligible for Medicare, they are unable to continue medical coverage in widely available commercial options that were available when they were employed. The cost of supplemental insurance for fee-for-service Medicare is often much higher and the benefits are fewer than with commercial insurance.

Our challenge is to increase participation in alternatives to Medicare fee-for-service. Participation by plans in the M+C program is declining. While there are several activities occurring that may minimize this trend, we are placing a new emphasis on expanding options and choices in the M+C program for people with Medicare. We are conducting this demonstration initiative to facilitate this process.

Through independent contractors, we researched specific health care models in the non-Medicare market, attempting to ascertain whether they would be effective in the Medicare program. This research has guided the development of this special solicitation.

C. Findings

Our research indicates that the success of the PPO concept is not being replicated in the Medicare program. Several of the organizations interviewed reported significant success with the PPO model and high satisfaction from subscribers. While some M+C plans are currently operating with aspects of the PPO concept, they have had minor impact. Because there are so many variations of the PPO theme, clearly defining the different types of PPO models is difficult. Industry experts confirmed this difficulty, but also emphasized that the PPO concept offers the potential for innovation in benefit design and the ability to customize product offerings to customer needs.

These experts also stated that PPOs encourage efficient use of health services through coordinated care and various types of incentives. PPO enrollees may use any provider either within or outside the PPO network, but have a financial incentive to use in-network providers. Some interventions, for example, disease management, counseling, health education, and such additional benefits as prescription drugs, may be conditional upon use of providers within the network.

Many organizations reported that they also offer closed panel HMOs, and that PPOs are designed as an intermediate option to the traditional HMO and traditional fee-for-service offerings. PPOs are popular with employers who use that model to manage and stabilize costs and to provide employees more flexibility and choice than in an HMO.

Point-of-service (POS) plans combine elements of both HMO and PPO coverage. They maintain an integrated provider network, but also offer benefits for out-of-network services. Several HMOs offer a POS option within the HMO framework. An HMO enrollee has the option of staying in-network or going out-of-network for care. Like PPOs, with this HMO POS option, an individual who elects to go out-of-network will likely absorb additional costs (that is, higher copayments or deductibles) and less coverage. HMOs

with a POS option frequently use a gatekeeper to control out-of-network use or to limit the amount of out-of-network use. Most PPOs do not use a gatekeeper.

All PPOs or PPO-like models share one common characteristic—a network of health care providers who have agreed to provide care to patients subject to contractually established payment levels. Often these networks are not as comprehensive as HMO networks because members are not restricted to using in-network providers. Several organizations expressed reservations about introducing a PPO model in Medicare because of the current M+C payment system. Almost all organizations expressed dissatisfaction with current payment amounts. The additional risk associated with out-of-network service compounds the problem.

Our research asked organizations specific questions about barriers to contracting with us. The organizations noted several administrative and regulatory barriers in addition to low payment levels and the lack of opportunity to share risk for higher-than-anticipated costs. Most plans were familiar with constraints imposed by M+C regulations. Some referred to barriers resulting from past policy decisions within our agency. In summary, most plans wanted an opportunity to be more innovative to use PPO concepts from their non-Medicare business. They requested more flexibility on qualifying conditions, monitoring requirements, and reporting requirements. They requested that we consider the unique characteristics of a PPO model and that our flexibility decisions be based on PPO characteristics and not reflect only what occurs with HMOs, the predominant type of M+C plan.

D. PPO Demonstrations

Under this demonstration, we will be testing alternatives to the current rules for payment to M+C organizations in section 1853 of the Social Security Act (the Act). As noted above, these demonstrations would be conducted under the authority under section 402(a)(1)(A) of the Social Security Amendments of 1967, 42 U.S.C. 1395b1(a)(1)(A), to test ''changes in methods of payment'' for Medicare services which may be more efficient and cost effective without compromising the quality of services. We would be waiving rules that relate to payment pursuant to section 402(b) of the Social Security Act Amendments of 1967. These PPO demonstrations will be considered M+C plans, although they will not be subject to some of the usual M+C provisions.

We believe that the PPO model will introduce incentives that will result in more efficient and cost-effective use of medical services. Enrollees will experience incentives to select efficient providers and to utilize services more effectively. Providers of care will experience incentives to alter the mix and intensity of services to enrollees in a cost-effective manner.

Based on the information received from private sector organizations, we intend to use our waiver authority to overcome some of the recognized barriers to increased participation in Medicare by health care organizations. Our overall goal is to use these demonstrations to assess the effects of new delivery models on various aspects of the M+C program. We will determine how these new delivery models impact Medicare beneficiaries and Medicare program expenditures as well as administrative burden. Through a formal independent evaluation, we will determine whether increasing the options available to beneficiaries has a favorable impact.

II. Provisions of This Notice

A. Purpose

This notice solicits applications from organizations for demonstration projects to offer the PPO model as an additional M+C choice to people with Medicare. We are encouraging experienced organizations to contract with us on a capitated payment basis and to provide PPO products that will appeal to people with Medicare, both those already familiar with some form of managed care and those familiar only with fee-for-service. We are interested in increasing the number of plan choices available so that more beneficiaries have optimal opportunity to find and select a plan that meets their needs. We anticipate that premium and other out-of-pocket costs for the PPO product will be priced between HMO and fee-for-service supplemental costs so that individuals will weigh these costs against the benefit and provider access characteristics associated with currently available plans.

We encourage organizations to propose innovative PPO models with the appropriate payment requirements and operational processes required to successfully implement the models. The quality of the proposals received will determine the number and types of models to be tested. Through this solicitation, we intend to award demonstrations in up to 12 geographic areas.

We intend to conduct the demonstrations for up to 3 years from the date of implementation. For each selected demonstration, we will assign a project officer who will serve as the point of contact with the demonstration project staff and who will provide technical consultation regarding waiver requirements, implementation and monitoring activities, and also provide feedback to us on demonstration status.

B. Funding

Under this demonstration, payments will flow to contract organizations as monthly capitation based on enrollment. We will use the M+C payment system and are requesting that applicants become familiar with this system. We will determine the actual payment amount and any reconciled adjustments based on the unique characteristics of each demonstration's payment terms.

Applicants may request minimal financial assistance for initial implementation costs (one-time payment up to $100,000 per demonstration project, subject to availability). We will consider requests for assistance with the following initial implementation costs:

- Modification of existing network contracts.
- Adaptation of claims processing systems to incorporate Medicare fee-for-service amounts.
- Preparation of special education and outreach efforts required for PPOs.
- Development of expense reporting required for any risk sharing or reconciliation processes.
- Development of any special quality of care or patient satisfaction data collection efforts unique to the demonstration.

A proposed project budget must illustrate the applicant's share of start-up costs, as well as our proposed share.

III. Requirements for Submission

Organizations with current M+C plan contracts may submit applications; however, existing contractors should offer the PPO model as a new choice for Medicare beneficiaries in the area. We prefer that organizations with an existing HMO product continue to offer the HMO product while also making the PPO product available. Our intention is to increase the number and types of choices available to people with Medicare. In our evaluation process, we will assign higher priority to proposals that create ''additional'' rather than ''substitute'' options.

The required application format is specified later in this solicitation.

Within the application each of the following subjects must be addressed:

A. Qualifications

We are interested in transporting successful models to the Medicare program. Applicants must describe in detail their prior experience and success in operating a PPO product. We will use our existing M+C application review process, or modifications of the review process, to determine if that organization is qualified to operate a PPO demonstration. It is important that the applicant be familiar with existing M+C qualification criteria. If the applicant believes that a criterion or requirement should not apply to the demonstration, this must be explicitly stated and sufficient rationale included for us to make a decision on the request.

The applicant should discuss State licensing procedures for the proposed demonstration site and indicate any potential problems in obtaining the appropriate license for the PPO demonstration. If potential problems exist, there should be a discussion of methods for their resolution. The applicant should also discuss any other requirements from local jurisdictions that could impact on the implementation of the Medicare PPO demonstration.

B. Networks

Since the key to a successful PPO product is the composition of the applicant's provider networks and the effectiveness of the network providers' care management, the applicant should describe the structure of the networks in its existing products. If possible, the applicant should illustrate with a diagram the layering of networks (PPO, HMO, PAR (participating network), etc.) and describe the important differences in contracting provisions for each network. For the proposed PPO demonstration, the applicant should describe which existing networks will be used, how networks must be modified for Medicare users, and if necessary, how networks will be expanded.

While PPOs in the private sector may not directly manage or coordinate care within preferred networks, managing or coordinating care within the Medicare population is likely to be productive and cost-effective. The application should discuss any coordinated care interventions planned by the PPO organization.

C. Payment Methodology/Risk Sharing

If the applicant proposes any variation from the traditional M+C payment amount in the demonstration, the application must describe in detail its proposed payment amount. Because we are maintaining budget neutrality, we will not pay an amount that is higher than either 99 percent of the fee-for-service payment amount or the M+C payment amount in an area. In addition, if the applicant is proposing any type of financial protection, such as risk sharing or reinsurance, this should also be described in detail. The applicant should include examples that illustrate the risk sharing arrangement. The shared risk of gain and loss between CMS and the PPO must be symmetrical and the PPO will always remain at significant financial risk.

Because we intend to implement any approved demonstrations as soon as possible, we do not intend to make any significant changes to the existing M+C payment system. Thus, we will use the existing blend methodology of risk-adjusted and demographic-adjusted payment. The usual M+C reporting systems will remain in place. If the applicant believes it is necessary to modify any aspects of the payment process, the application should request the modification and provide a detailed justification for the request.

D. Budget Neutrality

The PPO demonstrations awarded under this solicitation must be budget neutral. This means that the expected cost that we incur under the demonstration can be no more than the expected cost were the demonstration not to occur. The applicant must submit a budget neutrality calculation in the application. Using the proposed payment methodology (including any risk sharing arrangements), the applicant should estimate CMS payments with and without the demonstration for each year of the demonstration. The calculation should indicate how the estimates were derived. If risk sharing is proposed, there should be three calculations of budget neutrality: optimistic or best-case assumptions; expected or normal assumptions; and pessimistic or worst-case assumptions.

The applicant should include a revenue and expense statement showing CY 2003 estimated per member per month Medicare revenue and member premium; benefit expenses (hospital inpatient, hospital outpatient, professional, other Medicare services, and non-Medicare services); and administrative expense (administration and profit). The statement should show any copay credits for the various services.

If risk sharing is proposed, we will share risk only on medical benefit expenses. Administrative expense must be reasonable and consistent with prior practices. The applicant should describe a reconciliation process to be used to determine savings or losses. A reconciliation based on the PPO's accumulated medical claims expenses must include an independent audit, funded by the PPO, verifying the calculations.

We intend to carefully review each applicant's proposed payment methodology. Our primary goal in this demonstration is to increase choices for people with Medicare while maintaining budget neutrality. Thus, before we make final decisions on demonstration awards, we will negotiate with applicants the specific terms of their payment proposals including our payment amount and any risk sharing arrangement, if proposed. We will not pay an amount that is higher than the M+C payment amount in an area or higher than 99 percent of the fee-for-service payment amount. Following are some of the aspects of payment that we consider important.

- Whether the model is likely to draw enrollees from fee-for-service or existing M+C products by considering existing M+C enrollment penetration and the characteristics of supplemental insurance available.
- The potential for selection risk resulting from the benefits offered, including member premium and cost sharing requirements.
- The reasonableness of revenue and expense estimates, particularly the administrative component.
- Any special enhancements for people with Medicare, such as prescription drug coverage, broad preferred networks, and commitments for quality improvement.

E. Provider Payments

The applicant should discuss its policies and procedures on in-network contracting including its credentialing and recredentialing process, level of payment, quality and other types of reporting required, and financial incentives and rewards. The applicant should compare these approaches to those in its commercial contracts. Any special challenges to obtaining a sufficient network for Medicare enrollees should be noted along with proposed solutions.

The applicant should describe its method of payment for out-of-network providers for their care of PPO enrollees. The discussion should include numerical examples showing dollar contributions from the PPO organization and from the enrollee for Part A and Part B services. The example

should include specific Medicare allowable amounts, enrollee cost sharing, and the total amount received by the provider.

The applicant should also describe its method for conducting provider relations, including the means by which it will address questions, complaints, and appeals from out-of-network providers on payments received. In addition, the applicant should describe its procedures for enrollee complaints relating to any balance billing requests received from providers.

F. Claims Processing

The application should contain a discussion of the methods for processing and paying claims in the demonstration, including in-network and out-of-network services. The applicant should indicate whether existing claims processing systems used in commercial business will be used or whether new systems must be developed for the Medicare demonstration.

If there are any interface requirements for Medicare intermediaries and carriers, this should be noted and discussed. Estimates of effort required to establish required payment protocols should also be included.

G. Enrollment Potential

The applicant should state the reasons it believes that the PPO demonstration is a wise business decision, and in particular, the reasons it believes people with Medicare will enroll in the PPO product. If focus groups or other qualitative consumer-oriented studies were completed, the findings should be described. The applicant should also explain its method for computing enrollment projections. In addition, the applicant should describe and provide estimates of its target market including underlying enrollment trends, demographics, and origin of potential enrollees (that is, fee-for-service, Medigap supplement, Medicare managed care including M+C, employer group).

Benefits offered and cost-sharing requirements are important considerations for those considering PPO enrollment. The application should thoroughly describe the benefit design and cost-sharing requirements for in- and out-of-network services. To the extent possible, we encourage organizations to offer some level of prescription drug coverage. If out-of-pocket caps are included for in- and out-of-network services, the application should describe the methods of calculation and implementation. Since the incentives to use network services are critical to successful performance in a PPO environment, the application should discuss the manner in which the benefit design and cost-sharing characteristics contribute to the desired incentives.

The application should also contain a description of the marketing plan for the demonstration. We are interested in the approach that each applicant will take to inform people with Medicare about a new PPO option. Since the concept may be unknown to older Medicare beneficiaries, the applicant should explain how it would attempt to explain the unique features of the PPO, not only in the marketing plan, but also after enrollment, when members begin to use services.

The application should discuss how the PPO organization will advise its members of providers in the preferred network and how it intends to update information as network changes occur.

H. Organizational Capabilities

Applicants must demonstrate that they have the basic infrastructure to implement and carry out the demonstration. At a minimum, the applicant must have adequate physical assets, trained staff, information systems, and financial resources. Proposals must include a detailed implementation plan describing tasks, time lines, and resources required to implement the demonstration program. Since applicants must demonstrate prior experience in operating successful PPO or M+C programs, the implementation plan should focus on tasks and a time line for modifying or adapting the existing systems and networks to fit the Medicare demonstration program.

One of the tasks in the implementation plan must be preparation of a ''Medicare Plus Choice PPO Application'' (OMB number 0938–0470) which is different from this application for a PPO demonstration. If the application for a PPO demonstration is approved, the awardee must submit a M+C application before implementation of the demonstration. Organizations with existing M+C contracts are familiar with the M+C application process. We are requiring this information to assess the organizational, health service delivery, financial, and quality aspects of each PPO model before it becomes operational. We may suggest a site visit to assist the applicant.

We intend to simplify and streamline the existing application process and will require awardees only to supplement material and information already included in the demonstration application. As part of the application, applicants may request that normal M+C requirements be waived or modified in the PPO demonstration. If we approve an applicant's request, the qualification application should reflect any waivers or modifications. During the implementation planning process, the project officer and our staff will assist awardees in further defining the process. It is our intent to make the qualification process as streamlined as possible.

The plan must also include tasks and time lines associated with other required implementation planning activities, such as network contracting, claims processing design, risk-sharing reconciliation process, marketing, and data reporting. The pre-implementation planning phase should not exceed 4 months, since we anticipate that all demonstrations will begin no later than January 1, 2003.

I. Waivers

The applicant must list and discuss all waivers of M+C requirements that they have requested. The applicant should describe each waiver, give the legal reference of the M+C requirement to be waived, and present a rationale for the importance of the waiver to a successful demonstration outcome. The applicant must distinguish, if possible, between M+C requirements that are legally binding by statute or regulation and those that are current M+C policy.

It is important to note that, while our waiver authority is limited to provisions that relate to payment, we believe our existing waiver authority will provide the opportunity to demonstrate innovative PPO options that offer greater flexibility to plans. For example, while we cannot waive quality assurance requirements, our payment-related waiver authority could potentially have the effect of permitting an entity to operate a PPO product under this demonstration without being subject to quality assurance requirements that would otherwise apply. Some potential demonstration participants may be M+C organizations that have an HMO license. If so, they would not be eligible for the less prescriptive quality assurance requirements under section 1852(e)(2)(B) of the Act that apply to a PPO plan, since the definition of a PPO plan in section 1852(e)(2)(D) of the Act requires that the plan be ''offered by an organization that is not licensed or organized under State law as a health maintenance organization.'' Private fee-for-service plans, however, are subject to the same less prescriptive quality requirements in section 1852(e)(2)(B) of the Act, and there is no restriction on an entity with an HMO license offering a

private fee-for-service plan. Absent waiver authority under a demonstration, however, there would be an impediment to carrying out a PPO demonstration under the private fee-for-service plan rules, since there is a requirement that all providers receive the same payment amount for a service, without regard to whether they have a signed contract with the entity offering the private fee-for-service plan. Our authority to waive requirements that relate to reimbursement or payment could allow us to waive these rules, and thus allow the organization to have a different payment arrangement with a preferred provider network than with providers outside the network. This would allow an M+C organization with an HMO license to carry out the demonstration without being subject to the quality assurance requirements that apply to HMOs, while still establishing a PPO-type network for enrollees.

Other examples of M+C rules that potentially could be waived as relating to payment might be rules applicable to enrollee cost-sharing (for example, the current aggregate limit on cost-sharing under a particular plan), and requirements in section 1854 of the Act relating to the submission and approval of an ''adjusted community rate'' (ACR) proposal. Virtually any payment requirement in section 1853 of the Act could also be waived. We wish to emphasize, however, that we cannot waive non-payment related requirements under our authority in section 402(b) of the Social Security Act Amendments of 1967, 42 U.S.C. 1395b–1(b).

J. Submission of Applications

We must receive applications (original and 10 copies) as indicated in the **DATES** and **ADDRESSES** sections of this notice. Only proposals that are considered ''on time'' will be reviewed and considered for award. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the cover letter, executive summary, resumes, forms, and documentation supporting the budget.

Application Contents Outline

To facilitate the review process, the application should include the following:

1. *Cover Letter*—Must include a brief description of the proposed demonstration, the demonstration site, a contact person, and contact information.

2. *Funding Request*—If the applicant is requesting financial assistance for start-up costs, it must include Standard Form 424—Application for Federal Assistance (including SF–424a—''Budget Information'' and SF–424b—''Assurances''). The form and information are available at *www.hcfa.gov/research/sf424.pdf, www.hcfa.gov/research/sf424a.pdf,* and *www.hcfa.gov/research/sf424b.pdf.*

3. *Executive Summary*
4. *Statement of the Problem*
5. *Demonstration Design*
6. *Rationale for Waivers*
7. *Organizational Capabilities*
8. *Budget Neutrality Calculations*
9. *Implementation Plan*
10. *Related Supplemental Materials*

IV. Evaluation Process and Criteria

A panel of experts will conduct a review of responsive proposals. This technical review panel will convene in the month following the due date for submission of proposals. The panelist's recommendations will contain numerical ratings based on the evaluation criteria, the ranking of all responsive proposals, and a written assessment of each applicant. In addition, we will conduct a financial analysis of the recommended proposals and assess the budget neutrality of the proposed projects.

A. Evaluation Criteria and Weights

1. Understanding the Problem (10 points)

The proposal should provide the following:

- Discussion of the importance of creating additional choices for people with Medicare.
- Discussion of the health resource characteristics of the proposed demonstration site, including existing M+C options, and present a rationale for introduction of a PPO option.
- Documentation of existing M+C constraints preventing or discouraging PPO options in the proposed demonstration site.

2. Soundness of the Demonstration Design (25 points)

The applicant should provide an additional PPO option for Medicare beneficiaries rather than a substitution for an existing M+C product. In addition, the proposal should provide the following:

- Clear and convincing evidence with supporting materials that the proposed PPO option will be viable and will attract people on Medicare.
- Reasons that its benefit design and in-network and out-of-network cost sharing requirements will encourage enrollees to effectively utilize services and will not discourage enrollment or deter use of necessary services.
- Convincing evidence that the proposed payment arrangements, including any risk sharing provisions, will ensure financial stability and will be budget neutral.
- Sufficient justification for any M+C waivers that the applicant is requesting.
- Sufficient explanation of all on-going operational activities required in PPO models.
- Evidence that the PPO network will be sufficiently accessible and achieve the desired results.
- Assurance that all State requirements will be met before implementation.

3. Organizational Capabilities (20 points)

The proposal should provide the following:

- Evidence of the availability and adequacy of facilities, equipment, personnel, and data systems to successfully conduct the proposed demonstration.
- Sufficient information on the organization of personnel during the project, to whom they are to report, and the methods for using their services in implementation planning and in the operation of the demonstration.

4. Ability to Implement the Demonstration (25 points)

The proposal should—

- Present a thorough and well-documented implementation plan projecting timely completion of required start-up activities;
- Recognize the more difficult implementation issues requiring resolution by both the organization and by us, presenting a plan for that resolution; and
- Indicate the organization's familiarity with Medicare requirements in its qualification process and ongoing monitoring of M+C plans.

5. Strength of the Financial Analyses (20 points)

The proposal should—

- Provide a clear understanding of projected revenues and expenses during the demonstration;
- Provide sufficient examples and explanations of various financial scenarios; and
- Indicate that the applicant understands the budget neutrality constraints and that the estimates that the applicant uses in the budget neutrality calculations are sound.

B. Final Selection

Our Administrator will make final selections for demonstration projects from among the most highly qualified applicants. Factors including operational feasibility, special area

characteristics, and program priorities will be considered in the final selection process. Applicants should be aware that proposals may be accepted in whole or in part. In evaluating applications, we rely on our past experience with successful and unsuccessful demonstrations. We expect to make awards during CY 2002.

V. Collection of Information Requirements

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. We cannot reasonably comply with the normal clearance procedures because these demonstrations would not be implemented in a timely manner resulting in the potential loss of alternative and flexible benefits for beneficiaries. As a result, beneficiaries may not be provided health care choices that will produce the most beneficial health care outcomes. In addition, this demonstration will provide beneficiaries with an alternative health care choice that may alleviate the need for supplemental health care coverage resulting in more cost-efficient health care.

We are requesting OMB review and approval of this collection within 14 days of the date of this publication, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 14 days of this publication. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection; *Title of Information Collection:* PPO Demonstration Proposal Solicitation Package; *Form No.:* CMS–10063 (OMB# 0938–NEW); *Use:* CMS intends to use the collection requirements referenced in this notice to collect information needed to implement a high priority demonstration designed to strengthen the Medicare program. The collection requirements will be used to gather information about the characteristics of the applicant organizations and the services and benefits they propose to offer; *Frequency:* On Occasion; *Affected Public:* Business or other for profit and not for profit; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 400.

In addition, if an applicant is approved, the awardee must submit a Medicare+Choice PPO application, approved under OMB number 0938–0470, with a current expiration date of 11/30/2003, before implementation of the demonstration. We intend to simplify and streamline the existing application process and will require awardees only to supplement material and information already included in the demonstration application.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 14 days of the publication of this notice:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: John Burke.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Eydt, CMS Desk Officer.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it does not impose a significant economic impact to preferred provider organizations or the Medicare program.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. For purposes of the RFA, most preferred provider organizations are considered to be small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries (65 FR 69432).) Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of

a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under these requirements and have determined that it will not impose substantial direct requirement costs on State or local governments.

In accordance with Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 402 of the Social Security Act Amendments of 1967 (42 U.S.C. 1395b–1) (Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: March 28, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–9196 Filed 4–12–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–0007–N]

Health Insurance Reform: Standards for Electronic Transactions; Announcement of the Availability of a Model Compliance Plan

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of instructions for, and a model of, a compliance plan that covered entities may use to request an extension to the compliance deadline for standards for electronic transactions and code sets that covered entities must use for those transactions.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 786–1309.

SUPPLEMENTARY INFORMATION:

I. Background

On August 21, 1996 the Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, which included provisions to address the need for standards for electronic health care transactions and other administrative simplification issues. Through subtitle F of this law, the Congress added to title IX of the Social Security Act (the Act) a new part C (consisting of sections 1171 through 1179 of the Act), entitled ''Administrative Simplification.'' The purpose of this part is to improve the Medicare program, the Medicaid program, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements to enable the electronic exchange of certain health information.

Section 1172 of the Act makes any standard adopted under part C of the Act applicable to the following entities as defined in section 1171 of the Act:

- All health plans.
- All health care clearinghouses.
- Any health care provider who transmits any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act.

Section 1175(a)(3) of the Act establishes that each person to whom a standard or implementation specification applies is required to comply with the standard no later than 24 months (or 36 months for small health plans) following its adoption. With respect to modifications to standards or implementation specifications made after initial adoption, compliance must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days after the Secretary adopts the modification.

In the August 17, 2000 **Federal Register** (65 FR 50312), we published a final rule entitled ''Health Insurance Reform: Standards for Electronic Transactions'' that implemented the provisions of sections 1171 through 1179 of the Act. These provisions established new national standards with which all covered entities must comply. The effective date of these standards for all covered entities, with the exception of small health plans is October 16, 2002, and the effective date for compliance by small health plans is October 16, 2003. In addition, the August 17, 2000 final rule established a definitions section at 45 CFR 160.103 that includes definitions for the following terms— (1) Covered entities; (2) health plans; (3) small health plans; (4) health care clearinghouses; and (5) health care providers.

However, on December 27, 2001, the Administrative Simplification Compliance Act (ASCA) (Pub. L. 107–105) provided for a 1-year extension of the deadline for compliance with the electronic health care transactions standards and code sets for all covered entities, with the exception of small health plans, that request an extension on or before October 15, 2002. Covered entities that submit a request by the deadline will have until October 16, 2003 to come into compliance with the standards.

In addition, Pub. L. 107–105 required the Secretary to develop a model compliance plan by no later than March 31, 2002. In developing this model compliance plan, the Secretary consulted with organizations described in sections 1172(c)(3)(B) and (f) of the Act as organizations to be consulted in developing national electronic health care standards. One of these organizations, the Workgroup for Electronic Data Interchange (WEDI), developed a series of recommendations for the model plan. On February 7, 2002, these recommendations were discussed at a public hearing of the National Committee on Vital and Health Statistics (NCVHS).

II. Provisions of the Notice

This notice provides information to covered entities, with the exception of small health plans, that will not be compliant with the electronic health care transactions and code sets standards by October 16, 2002. As required by Pub. L. 107–105, we are providing a model compliance plan that covered entities may use to submit to request an extension. These entities may use one of the following options to file for a 1-year extension (that is, until October 16, 2003):

- Submit the on-line compliance plan, which is available on our website at *www.cms.hhs.gov/hipaa.*
- Submit a paper copy of the on-line compliance plan via mail.
- Submit their own version of a compliance plan that provides equivalent information.

The model compliance plan and instructions for its completion and submission are available via the Internet

on our website. Completion and timely submission of the model compliance plan by covered entities satisfies the ASCA requirement for requesting an extension.

A. Electronic Submissions of the Model Compliance Plan

Covered entities can submit this model compliance plan electronically via the Internet at www.cms.hhs.gov/hipaa. In order to obtain an extension, electronic submissions must be completed on or before October 15, 2002. Covered entities that complete their compliance plan electronically will receive an electronic confirmation number as their response. The confirmation number serves as the covered entity's approval notice. For additional information regarding electronic compliance plan submissions, see Appendix A of this notice. To view a copy of the electronic form, see Appendix B of this notice.

B. Paper and Alternative Submissions of a Compliance Plan

Covered entities also have the option of submitting a paper copy of the model plan. This paper submission can be a duplicate of the form in Appendix B of this notice or a printed copy of the electronic form available on our website.

In addition, a covered entity has the option to submit its own version of a compliance plan (paper copy), that must include the following:

- An analysis of the reasons for noncompliance.
- A budget for achieving compliance.
- A work plan and implementation strategy for achieving compliance.
- A decision regarding whether a contractor or vendor may be used to help achieve compliance.
- A testing timeframe that begins on or before April 16, 2003.

All paper and alternative submissions must be postmarked by October 15, 2002 and sent to the following address:

Attention: Model Compliance Plans, Centers for Medicare & Medicaid Services, PO Box 8040, Baltimore, Maryland 21244–8040.

We will not acknowledge receipt of these submissions. Therefore, we suggest that covered entities submitting their plans via mail use a method that provides proof of delivery. For additional information on paper or alternative submissions, see Appendix A of this notice.

III. Collection of Information Requirements

In accordance with section 1175(b)(1)(A) of the Act as amended by section 2 of Pub. L. 107–105, the form included as Appendix B of this notice is exempted from the requirements of the Paperwork Reduction Act of 1995. Consequently, neither the form nor the notice need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), section 1102 (b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any given year). We have determined that this notice is not a major rule because it does not impose an economically significant impact on covered entities or the Medicare program.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. For purposes of the RFA, most covered entities (that is, health plans, health care clearinghouses, and health care providers) are considered to be small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries (65 FR 69432).) Individuals and States are not included in the definition of a small entity. Covered entities will be able to assess their own progress toward HIPAA compliance and determine whether or not to request an extension. Covered entities that obtain the extension will have the added flexibility to schedule the activities needed to implement the standards and they will have additional time to conduct thorough testing with their trading partners. We are unable to quantify the impact of the 1-year extension, but we will be able to analyze the data that we receive from covered entities that submit compliance extension plans.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Currently we are unable to quantify the impact of the provisions of this notice on small rural hospitals, but we believe that we will be better able to assess the impact of the 1-year extension through the analysis of the data submitted by covered entities requesting the extension.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will not mandate any requirements for State, local or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under these requirements and have determined that it will not impose substantial direct requirement costs on State or local governments. We also note that the option to obtain a 1-year extension will give States or local governments more flexibility in several areas which may include—(1) Additional time to conduct testing; (2) additional time for implementation; and (3) additional time to consult with vendors. In accordance with Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1175 of the Social Security Act (42 U.S.C. 1320d–4)

Dated: April 8, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

BILLING CODE 4120–01–P

Appendix A:

Department of Health and Human Services
HIPAA Electronic Health Care Transactions and Code Sets Standards
Model Compliance Plan Instructions

Overview

In 1996, the Health Insurance Portability and Accountability Act (HIPAA) became law. It requires, among other things, that the Department of Health and Human Services establish national standards for electronic health care transactions and code sets. October 16, 2002 was the original deadline for *covered entities* to comply with these new national standards. However, in December 2001, the Administrative Simplification Compliance Act (ASCA) extended the deadline for compliance with HIPAA Electronic Health Care Transactions and Code Sets standards (codified at 45 C.F.R. Parts 160, 162) one year – to October 16, 2003 – for all *covered entities* other than *small health plans* (whose compliance deadline is already October 16, 2003). In order to qualify for this extension, *covered entities* must submit a compliance plan by October 15, 2002. Completion and timely submission of this model compliance plan will satisfy this federal requirement, and assist us in identifying and addressing impediments to your timely and effective implementation of the HIPAA Electronic Health Care Transactions and Code Sets standards. If you are a *covered entity* other than a *small health plan* and do not submit a compliance plan, you must be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards by October 16, 2002.

You can submit this on-line model compliance plan electronically, and we will provide an on-line confirmation number as acknowledgment of your extension. This on-line compliance plan is a model only, and is provided for your information. *Covered entities* have the option of submitting their own version of a compliance plan that provides equivalent information. Refer to the "Alternative Submissions" section of these instructions for more information. For those filing electronically, your electronic confirmation number will be the only notice that you have received an extension. No other notice will be provided for electronic or paper submissions. If your paper plan consists of the equivalent information required by the statute (*covered entity* and contact information; reasons for filing for the extension; implementation budget; and the three phases of the implementation strategy) your plan is complete and you may consider your extension granted.

Completing this model compliance plan takes about 15-20 minutes. Simply answer a few questions about compliance concerns you may have, and tell us where you are in the implementation process.

The Centers for Medicare & Medicaid Services (CMS) will share information obtained from submitted compliance plans with the National Committee on Vital and Health Statistics (NCVHS) as required by the Administrative Simplification Compliance Act. The NCVHS serves as the statutory public advisory body to the Secretary of Health and Human Services in the area of health data and statistics. The NCVHS will use this information to identify barriers to compliance. All information shared with the NCVHS will have identifying information deleted.

For information on *defined terms* used in this document, refer to 45 C.F.R. 160.103 or 162.103.

Who Should File

If you are a *covered entity* and will not be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards by October 16, 2002, you must file a compliance plan in order to obtain an extension. A *covered entity* is a *health plan, a health care clearinghouse, or a health care provider* who transmits any health information in electronic form in connection with a transaction for which the Secretary has adopted standards at 45 C.F.R. Part 162. These terms are defined at 45 C.F.R. 160.103. The term *"health care provider"* includes individual physicians, physician group practices, dentists, other health care practitioners, hospitals, nursing facilities, and so on.

If you are a member of a group practice, the extension will be granted to all physicians/practitioners who are members of that practice. It is not necessary to file separate compliance plans for each physician in the practice if the practice files all claims on your behalf. However, if you submit claims for payment outside of the group's claims processing system, you need to file your own compliance plan.

You do not have to file a compliance plan if you will be compliant by October 16, 2002 but one or more of your trading partners is not yet HIPAA compliant. But remember that you/your organization must be HIPAA compliant by this date (or by October 16, 2003 if you are filing a compliance plan) for all transactions that apply to you.

When to File

Compliance plans must be submitted electronically no later than October 15, 2002. Paper submissions should be postmarked no later than October 15, 2002. Compliance plans filed electronically and paper submissions received or postmarked after this date will not qualify for the extension.

How to File

Electronic submission is the fastest, easiest way to file your compliance plan. Just complete the model compliance plan on-line, click "Submit" at the end, and it will be on its way to us electronically. For those filing electronically, your electronic confirmation number will be the only notice that you have received an extension. No other notice will be provided for electronic or paper submissions. If your paper plan consists of the equivalent information required by the statute (*covered entity* and contact information; reasons for filing for the extension; implementation budget; and the three phases of the implementation strategy) your plan is complete and you may consider your extension granted.

Please do NOT electronically submit AND mail paper copies of this model compliance plan. One submission per *covered entity*, either electronically OR paper, will suffice.

Alternative Submissions

Covered entities that use the model compliance plan provided on our website, www.cms.hhs.gov/hipaa can file electronically. If you cannot submit your compliance plan electronically via our website, or you want to submit your own version of a compliance plan

that provides equivalent information, it must be printed and mailed to us. Please send paper submissions of your compliance plan postmarked no later than October 15, 2002 to:

Attention: Model Compliance Plans
Centers for Medicare & Medicaid Services
P.O. Box 8040
Baltimore, MD 21244-8040

CMS will not acknowledge receipt of paper submissions. For proof of delivery, we suggest you use the U.S. Postal Service.

Section A: *Covered Entity* and Contact Information

(1) Name of *Covered Entity*. Please enter the name of the *covered entity* for which you are filing this compliance plan. See "Who Must File" above for more information.

If you are filing for multiple related *covered entities* that are operating under a single implementation plan, list their names, tax identification numbers and Medicare identification numbers. Compliance plans for unrelated multiple *covered entities* or for related *covered entities* that are not included under the same implementation plan must be filed separately. Are you filing for a health plan, health care clearinghouse or other health care organization that has multiple components? If they are operating under the same implementation plan, then you can file one compliance plan on their behalf. If not, then you must file separate compliance plans for each entity. See also (5) "Authorized Person" for more information.

(2) Tax Identification Number. Enter each *covered entity's* IRS Employer Identification Number (EIN). If there is no EIN, enter the *covered entity's* Social Security Number. While an EIN or Social Security Number is not required, this information will facilitate ensuring that the correct *covered entity* obtains the extension.

(3) Medicare Identification Number.

Please enter the identification number that applies to each *covered entity* listed.

- If you are a Medicare physician or physician group, enter your UPIN number.
- If you are a supplier of durable medical equipment, enter your NSC number. If you have multiple locations under one EIN, just report the initial location's number (a 6-digit number followed by 0001)
- If you are an institution, enter your OSCAR number. This is your 6-digit Medicare billing number.

If you are not a Medicare provider, you need not enter any identification number in (3).

(4) Type of *Covered Entity*. Tell us which *covered entity* category applies to your organization. Check all boxes that apply.

(5) Authorized Person. Provide the name of a person who is authorized to request the extension and provide the information. This might be the individual physician, business/practice

manager, a corporate officer, chief information officer or other individual who is responsible for certifying that the information provided is accurate and correct. (You may include a title, e.g., Dr.). If filing for multiple *covered entities*, this person should be authorized to request the extension for all the listed *covered entities*. Otherwise, a separate compliance plan must be filed to indicate the authorized person for each respective *covered entity*.

(6) Title. Provide the title for the person shown in (5).

(7) Street. Enter the street mailing address/post office box for the person shown in (5)

(8) City/State/Zip. Enter this information for the person's address as shown in (5).

(9) Telephone Number: Enter the telephone number (including area code) for the person shown in (5).

Section B: Reason for Filing for This Extension

(10) Please let us know the reason(s) why you will not be in compliance with the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162) by October 16, 2002. Check all boxes that apply. If the reason you will not be compliant is not shown, check "Other" and briefly specify the reason for non-compliance.

Section C: Implementation Budget

This question asks about the estimated financial impact of HIPAA compliance on your organization. Please respond to (11) by indicating on the drop-down menu which category most closely reflects your estimate of your HIPAA compliance costs. If you're not sure, check "Don't Know."

Section D: Implementation Strategy

This section asks about overall awareness of the HIPAA Transactions and Code Set Standards, Operational Assessment, and Development and Testing. These are collectively referred to as the Implementation Strategy.

Implementation Strategy Phase One -- HIPAA Awareness

If you have completed this Awareness phase of the Implementation Strategy, check YES (12) and skip to (14), indicating your completion date for this phase. Then proceed to Phase Two – Operational Assessment. If you answer (12) NO, answer (13) and (14).

To complete this Awareness phase you should

- obtain information regarding HIPAA Electronic Transactions and Code Sets Standards;
- discuss this information with your vendors; and
- conduct preliminary staff education.

Tell us when you started or plan to start this activity (13), and when you completed or plan to complete activity for this Awareness phase of the Implementation Strategy (14).

Implementation Strategy Phase Two -- Operational Assessment

If you have completed this Operational Assessment phase of the Implementation Strategy, check YES (15) and skip to (20), indicating your completion date for this phase. Then proceed to Phase Three – Development and Testing. If you answer (15) NO, answer all questions (16) through (20).

To complete this Operational Assessment phase you should

- inventory the HIPAA gaps in your organization;
- identify internal implementation issues and develop a workplan to address them; and
- consider and decide whether or not to use a vendor or other contractor to assist you in becoming compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards.

Indicate your progress for tasks (16) through (18), and projected/actual start and completion dates for this phase in the boxes provided (19) and (20).

Implementation Strategy Phase Three -- Development and Testing

If you have completed this Development and Testing phase, check YES (21) and skip to (26), indicating your completion date. If you answer (21) NO, answer all questions (22) through (26).

To complete this Development and Testing phase, you should

- finalize development of applicable software and install it;
- complete staff training on how to use the software; and
- start and finish all software and systems testing.

Show your progress for tasks (22) and (23) for resolving computer software conversion to a HIPAA compliant system and training your staff. Indicate your projected/actual development start dates (24), projected/actual initial internal software testing date (25) and final testing completion date (26).

The model compliance plan is now complete. You may click on "Clear Plan" to delete your entries and revise your information, or "Submit Electronically" to electronically submit this model compliance plan; or print it and follow the instructions for paper submissions in the "How to File" section of these instructions.

Appendix B:

Department of Health and Human Services

Health Insurance Portability and Accountability Act of 1996

Electronic Health Care Transactions and Code Sets Standards Model Compliance Plan

In 1996, the Health Insurance Portability and Accountability Act (HIPAA) became law. It requires, among other things, that the Department of Health and Human Services establish national standards for electronic health care transactions and code sets. October 16, 2002 was the original deadline for *covered entities* to comply with these new national standards. However, in December 2001, the Administrative Simplification Compliance Act (ASCA) extended the deadline for compliance with HIPAA Electronic Health Care Transactions and Code Sets standards (codified at 45 C.F.R. Parts 160, 162) one year – to October 16, 2003 – for all *covered entities* other than *small health plans* (whose compliance deadline is already October 16, 2003). In order to qualify for this extension, *covered entities* must submit a compliance plan by October 15, 2002. Completion and timely submission of this model compliance plan will satisfy this federal requirement, and assist us in identifying and addressing impediments to your timely and effective implementation of the HIPAA Electronic Health Care Transactions and Code Sets standards. If you are a *covered entity* other than a *small health plan* and do not submit a compliance plan, you must be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards by October 16, 2002.

For general information about HIPAA and instructions on how to complete this compliance plan, refer to our website, www.cms.hhs.gov/hipaa. You can go to the website and submit this on-line compliance plan electronically, and we will provide an on-line confirmation number as acknowledgment of your extension. This on-line compliance plan is a model only, and is provided for your information. *Covered entities* have the option of submitting their own version of a compliance plan that provides equivalent information. Refer to the instructions on our website for information on how to file alternative submissions. For those filing electronically, your electronic confirmation number will be the only notice that you have received an extension. No other notice will be provided for electronic or paper submissions. If your paper plan consists of the equivalent information required by the statute (*covered entity* and contact information; reasons for filing for the extension; implementation budget; and the three phases of the implementation strategy) your plan is complete and you may consider your extension granted.

For information on *defined terms* used in this document, refer to 45 C.F.R. 160.103 or 162.103.

Section A: *Covered Entity* and Contact Information

1. Name of *Covered Entity*	2. Tax Identification Number	3. Medicare Identification Number(s)

4. Type of *Covered Entity* (Check all that apply from these drop-down menus)

☐ *Health Care Clearinghouse* ☐ *Health Plan* ☐ *Health Care Provider*

Dentist
DME Supplier
Home Health Agency
Hospice
Hospital
Nursing Home
Pharmacy
Physician/Group Practice
Other

5. Authorized Person ☐ 6. Title ☐

7. Street
8. City State Zip
9. Telephone Number

Section B: Reason for Filing for This Extension

10. Please check the box next to the reason(s) that you do not expect to be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162) by October 16, 2002. Multiple boxes may be checked.

- ☐ Need more money
- ☐ Need more staff
- ☐ Need to buy hardware
- ☐ Need more information about the standards
- ☐ Waiting for vendor(s) to provide software
- ☐ Need more time to complete implementation
- ☐ Waiting for clearinghouse/billing service to update my system
- ☐ Need more time for testing
- ☐ Problems implementing code set changes
- ☐ Problems completing additional data requirements
- ☐ Need additional clarification on standards
- ☐ Other

Section C: Implementation Budget

This question relates to the general financial impact of the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160,162) on your organization.

11. Select from the drop-down menu the range of your estimated cost of compliance with the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162):

Less than $10,000
$10,000 - $100,000
$100,000 - $500,000
$500,000 - $1 million
Over $1 million
Don't know

Section D: Implementation Strategy

This Implementation Strategy section encompasses HIPAA Awareness, Operational Assessment, and Development and Testing. For more details on completing each of these subsections, refer to the model compliance plan instructions at www.cms.hhs.gov/hipaa.

Implementation Strategy Phase One -- HIPAA Awareness

These questions relate to your general understanding of the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162).

12. Please indicate whether you have completed this Awareness phase of the Implementation Strategy.
☐ Yes ☐ No

If yes, skip to (14), and then to Phase Two – Operational Assessment. If no, please answer both (13) and (14). Have you determined a:

13. Projected/Actual Start Date: (select month/year from this drop-down menu) ☐ ☐

14. Projected/Actual Completion Date: (select month/year from this drop-down menu) ☐ ☐

Implementation Strategy Phase Two -- Operational Assessment

These questions relate to HIPAA operational issues and your progress in this area.

15. Please indicate whether you have completed this Operational Assessment phase of the Implementation Strategy.
☐ Yes ☐No

If yes, proceed to (20) and then Phase Three – Development and Testing. If no, please answer all the following questions. Have you:

16. Reviewed current processes against HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162) requirements?
☐ Yes ☐No ☐Initiated But Not Completed

17. Identified internal implementation issues and developed a workplan?
☐ Yes ☐No ☐Initiated But Not Completed

18. Do you plan to or might you use a contractor/vendor to help achieve compliance?
☐ Yes ☐No ☐Undecided

19. Projected/Actual Start Date: (select month/year from this drop-down menu) ☐ ☐

20. Projected/Actual Completion Date: (select month/year from this drop-down menu) ☐ ☐

Implementation Strategy Phase Three --- Development and Testing

These questions relate to HIPAA development and testing issues. ASCA legislation requires that testing begin no later than April 16, 2003. For more details, refer to the model compliance plan instructions at www.cms.hhs.gov/hipaa.

21. Please indicate whether you have completed this Development and Testing phase of the Implementation Strategy.

☐ Yes ☐ No

If yes, proceed to (26). If no, please answer all the following questions. Have you:

22. Completed software development/installation?

☐ Yes ☐ No ☐ Initiated But Not Completed

23. Completed staff training?

☐ Yes ☐ No ☐ Initiated But Not Completed

24. Projected/Actual Development Start Date: (select month/year from this drop-down menu)

25. Projected/Actual Initial Internal Software Testing Start Date: (select month/year from this drop-down menu)

26. Projected/Actual Testing Completion Date: (select month/year from this drop-down menu)

CLICK HERE TO SUBMIT ELECTRONICALLY

CLICK HERE TO CLEAR PLAN

FOR PAPER SUBMISSIONS:

Please mail paper versions of this model compliance plan to:

Attention: Model Compliance Plans
Centers for Medicare & Medicaid Services
P.O. Box 8040
Baltimore, MD 21244-8040

CMS will not provide an acknowledgment of receipt of paper submissions of this model compliance plan. For proof of delivery, we suggest that you use the U.S. Postal Service.

[FR Doc. 02–9197 Filed 4–12–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0276]

Agency Information Collection Activities; Announcement of OMB Approval; Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods with Vinclozolin Residues

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods with Vinclozolin Residues'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 23, 2001 (66 FR 53614), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0484. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–9097 Filed 4–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety Research; Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in this request for applications (RFA), is announcing the availability of approximately $750,000 in research funds for fiscal year (FY) 2002. These funds will be used to support collaborative research efforts between the Center for Food Safety and Applied Nutrition (CFSAN) and scientists and to complement and accelerate ongoing research in five project areas in order to reduce the incidence of foodborne illness and to protect the nations's food supply, food additives, and dietary supplements.

DATES: Submit applications by May 30, 2002.

ADDRESSES: Submit completed applications to Maura Stephanos, Grants Management Specialist, Grants Management Staff (HFA–520), Division of Contracts and Procurement Management, Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183, FAX 301–827–7106, e-mail: mstepha1@oc.fda.gov. Application forms are available either from Maura Stephanos (address above) or on the Internet at http://grants.nih.gov/grants/funding/phs398/phs398.html. NOTE: Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Maura Stephanos (address above).

Regarding the programmatic aspects of this notice: John W. Newland, Microbial Research Coordinator, Office of Science (HFS–06), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1915, e-mail: john.newland@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to reducing the incidence of foodborne illness to the greatest extent feasible and to protecting the integrity of the nation's food supply. Research in food safety seeks to reduce the incidence of foodborne illness by improving our ability to detect and quantitate foodborne pathogens, toxins and chemicals that could jeopardize the security of the food supply, and to find new and improved ways to control these agents. CFSAN supports multiyear cooperative agreements intended to help achieve these research goals of reducing the incidence of foodborne illness and ensuring the integrity of foods, food additives, and dietary supplements. This extramural program supports novel collaborative research efforts between CFSAN and scientists and leverages expertise not found within CFSAN to complement and accelerate ongoing research. Collaborations such as these provide information critical to food safety guidance and policymaking, and stimulate fruitful interactions between FDA scientists and those within the greater research community.

In continuation of this effort, CFSAN will provide FY 2002 funds to be used for research to help enhance the following capabilities of the agency: The ability to detect and control the presence of human pathogens, food allergens, toxins, and other bioactive compounds that may be present in FDA-regulated products; and the development of a framework by which the possible risk posed by potential high threat agents that might be used to adulterate particular foods, food additives, and dietary supplements can be ranked and systematically evaluated.

FDA is announcing the availability of research funds for FY 2002 to support research in the following five project categories: (1) Development and implementation of a risk-ranking framework to evaluate potential high threat microbiological agents, toxins, and chemicals in food; (2) practical application of laboratory based biosensor detection technology to detect and analyze microbiological agents, food allergens, toxins, and other bioactive compounds in foods, food additives, and dietary supplements; (3) multi-residue capillary gas chromatographic/mass spectrometric (GC/MS) technique for the detection of chemicals that may be present as contaminants in foods, food additives, and dietary supplements; (4) evaluation of the efficacy of multiple heat treatments used during the production of dairy products relative to the inactivation of bacterial spores; and (5) development of a bioinformatic approach, using predictive algorithms and protein sequence databases (structural proteomics), to identify the potential allergenicity of food proteins. Approximately $750,000 will be available in FY 2002. Of this amount,

$500,000 will be available for projects 1 through 4 detailed in section II ''Research Goals and Objectives'' of this document, and $250,000 will be available for project 5 also detailed in section II ''Research Goals and Objectives'' of this document. For projects 1 through 4, FDA anticipates making up to three awards of $100,000 to $200,000 (direct plus indirect costs) per award per year. Support of these agreements may be up to 3 years in duration with the total budget amount not to exceed $200,000 (direct plus indirect costs) per year or a total of $600,000 for a 3-year award.

For project 5, FDA anticipates making one award up to $250,000 (direct plus indirect costs) per year. Support for this project may be up to 3 years in duration with a total budget amount not to exceed $250,000 (direct plus indirect costs) per year or a total of $750,000 for a 3-year award. Any application received that exceeds the amounts stated above will not be considered responsive and will be returned to the applicant without being reviewed. The number of agreements funded will depend on the availability of Federal funds to support the projects and on the quality of the applications received. There is no assurance that awards will be made in each of the five project categories. After the first year, additional years of noncompetitive support are predicated upon performance and the availability of Federal funds.

FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a hard copy of the ''Healthy People 2010'' objectives, vols. I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center (Center), P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of ''Healthy People 2010'' is priced at $2 per copy. Telephone orders can be placed at the Center by calling 301–468–5690. The Center also sells the complete conference edition in CD–ROM format (B0071) for $5. This publication is also available on the Internet at http://health.gov/healthypeople. Internet viewers should select ''Publications.''

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

II. Research Goals and Objectives

Proposed projects designed to fulfill the specific objectives of any one of the following requested projects will be considered for funding. Applications may address only one project and its objectives per application. However, applicants may submit more than one application for more than one project. It should be emphasized that in all of the following projects, there is a particular desire to promote the development of improved techniques for either the detection, control, or risk ranking of microbiological agents, toxins, allergens and chemicals in food. Such agents include but are not limited to, *Bacillus anthracis*, *Yersinia pestis*, *Francisella tularensis*, *Clostridium botulinum*, *Salmonella Enterica*, pathogenic *Escherichia coli*, acetylcholinesterase inhibitors, botulinum toxins, abrin, tricothecenes, rodenticides, amanitine, and other natural toxins. None of the five projects should involve human research subjects that are not exempt from the Department of Health and Human Services (DHHS) regulations (45 CFR part 46) for the protection of human research subjects. The projects and their objectives are as follows.

A. Project 1: Development and Implementation of a Risk-Ranking Framework to Evaluate Potential High Threat Microbiological Agents, Toxins, and Chemicals in Food

A risk-ranking framework is needed to facilitate the evaluation and ranking of potential high threat microbiological agents, toxins, and chemicals that can be used to contaminate food. The framework will include a model for quantitatively or semiquantitatively comparing and determining the potential threats of these agents and the ability to evaluate intervention or control points for food industry, manufacturers/processing, warehouses, transport, retail, etc., to protect the food supply. Implementation of the framework would include using existing and newly developed lists of agents and systematically ranking threats. Criteria used in the framework for ranking purposes could include but would not be limited to, compatibility with food as a vehicle, toxicity (or needed dose), accessibility, and likelihood of effect (illness).

B. Project 2: Practical Application of Laboratory Based Biosensor Detection Technology to Detect and Analyze Microbiological Agents, Food Allergens, Toxins, and Other Bioactive Compounds in Foods, Food Additives, and Dietary Supplements

The objective of this project is to obtain customer ready technology that combines immunoassay capture techniques with appropriate detector technology, such as an optical transducer or a mass spectrometer for use in the rapid detection and identification of microbiological agents and toxins in FDA-regulated products (i.e., food). This will provide a new detection methodology critical to FDA's food surveillance programs, which are designed to keep hazardous substances out of the food supply. Research must specifically focus on the detection of a variety of microbial agents, toxins, and other bioactive compounds in a number of different food matrices. The analytical method resulting from this research will provide an accurate, fast, and cost-effective means of screening food products.

C. Project 3: Multi-Residue Capillary Gas Chromatographic/Mass Spectrometric (GC/MS) Technique for the Detection of Chemicals That May Be Present as Contaminants in Foods, Food Additives and Dietary Supplements

The objective of this project is the development of an analytical technique, based on GC/MS, which can be used for the identification of a number of chemical toxins in foods. The awardee will produce a single validated procedure that can be used to screen various foods, food additives, and dietary supplements for a number of chemical toxins. The method will be capable of identifying a number of classes of chemical agents including but not limited to pesticides, rodenticides, and mycotoxins in these FDA-regulated products (i.e., food). This research will provide a new analytical methodology critical to FDA's food surveillance programs, which are designed to identify and avoid possible hazardous substances in the food supply.

D. Project 4: Evaluation of the Efficacy of Multiple Heat Treatments Used During the Production of Dairy Products Relative to the Inactivation of Bacterial Spores

Multiple heat treatments are used during the manufacture of a variety of dairy products. For example, in the production of most cheeses there are two to four heating steps (milk pasteurization, cooking and primary

fermentation, secondary fermentation, and extruding). Pasteurization may in some instances heat-shock spores into germination. A study is sought to determine whether the effect of multiple heat treatments in the production of these products is sufficient to destroy vegetative cells and/or spores and possible toxins that might arise from the presence of spores of *C. botulinum* and *B. anthracis*.

E. Project 5: Development of Bioinformatic Approachs, Using Predictive Algorithms and Protein Sequence Databases (Structural Proteomics), to Identify the Potential Allergenicity of Food Proteins

The objective of this project is to identify Immunoglobulin E (IgE)-binding epitopes or other structural characteristics of known food allergens to establish structure-prediction algorithms, which will eventually allow scientists to predict structure and function from protein sequence. For this project, the prediction of structure and function from sequence is focused on establishing the potential allergenicity of food proteins or to identify previously unknown food allergens. An evaluation of the feasibility of bioinformatic approaches to characterize or rank the potential allergenicity of food proteins could be modeled after predictive capabilities of currently available methods or databases for identification of IgG- or Major Histocompatability Complex (MHC)- binding epitopes or pharmaceutical target binding sites. This research should lead to the development of rapid methods for evaluation of potential food allergens (e.g, in bioengineered foods and ingredients) and be directed toward validation of these methods using biological systems, such as enzyme immunoassay or other quantitative methods.

III. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. NIH's modular grant program does not apply to this FDA program.

B. Eligibility

These cooperative agreements are available to any foreign or domestic, public or private nonprofit entity (including State and local units of government) and any foreign or domestic, for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

The length of support will be for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year and (2) availability of Federal FY funds.

IV. Reporting Requirements

Annual Financial Status Reports (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer (address same as given above for Grants Management Specialist) within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR on time may be grounds for suspension or termination of the agreement. Program Progress Reports will be required quarterly and will be due 30 days following each quarter of the applicable budget period except that the fourth quarterly report which will serve as the annual report and will be due 90 days after the budget expiration date. For continuing agreements, an annual Program Progress Report is also required. Submission of the noncompeting continuation application (PHS 2590) will be considered as the annual Program Progress Report. The recipient will be advised of the suggested format for the Program Progress Report at the time an award is made. In addition, the principal investigator will be required to present the progress of the study at an annual FDA extramural research review workshop in Washington, DC. Travel costs for this requirement should be specifically requested by the applicant as part of their application. A final FSR, Program Progress Report, and Invention Statement must be submitted within 90 days after the expiration of the project period, as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. A record of these monitoring activities will be duly made in an official file specific for each cooperative agreement and may be available to the recipient of the cooperative agreement upon request.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement may include but is not limited to the following:

1. FDA will provide guidance and direction with regard to the scientific approach and methodology that may be used by the investigator.
2. FDA will participate with the recipient in determining and executing any: (a) Methodological approaches to be used, (b) procedures and techniques to be performed, (c) sampling plans proposed, (d) interpretation of results, and (e) microorganisms and commodities to be used.
3. FDA will collaborate with the recipient and have final approval on the experimental protocols. This collaboration may include protocol design, data analysis, interpretation of findings, coauthorship of publications, and the development and filing of patents.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. To be responsive, an application must: (1) Be received by the specified due date; (2) be submitted in accordance with section III.B ''Eligibility,'' section VII ''Submission Requirements,'' and section VIII.A ''Submission Instructions'' all of this document; (3) not exceed the recommended funding amount stated in section I of this document; (4) address only one of the five project categories identified in this RFA; (5) address specific requirements of individual projects as stated in section II ''Research Goals and Objectives'' of this document; and (6) bear the original signatures of both the Principal Investigator and the Institution's/Organization's Authorized

Official. If applications are found to be not responsive to this announcement, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application.

Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Review Criteria

Applicants must clearly state in their application for which of the requested projects they are applying. All applications will be evaluated by program and grants management staff for responsiveness. Applications will be reviewed and ranked within each project category. There is no assurance that awards will be made in each of the five project categories. If a project category is funded, funding will start with the highest ranked application within that project category, and any additional awards within that project category will be made based on the next highest ranked application. All questions of a technical or scientific nature should be directed to the CFSAN program staff (See the **FOR FURTHER INFORMATION CONTACT** section of this document for addresses.), and all questions of an administrative or financial nature should be directed to Maura Stephanos of the Grants Management Staff (address above).

All applications will be reviewed and scored on the following criteria:

1. Soundness of the scientific rationale for the proposed study and appropriateness of the study design and its ability to address all of the objectives of the RFA;
2. Availability and adequacy of laboratory facilities, equipment, and support services, e.g., bio-statistics computational support, databases, etc.;
3. Research experience, training, and competence of the principal investigator and support staff; and
4. Whether the proposed study is within the budget guidelines and proposed costs have been adequately justified and fully documented.

VII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01) or the original and two copies of PHS 5161–1 (Rev. 7/00) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of PHS 5161–1. The application receipt date is May 30, 2002. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled: ''Response to RFA FDA CFSAN–02–1, (insert Project #1, 2, 3, 4, or 5).''

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal business hours, from 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, and is then forwarded to FDA and not received in time for orderly processing will be deemed not responsive and returned to the applicant. Applications must be submitted via mail or hand delivery as stated above. FDA is unable to receive applications electronically. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01) or PHS 5161–1 (Rev. 7/00). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address.

The face page of the application should reflect the request for applications number, RFA–FDA–CFSAN–02–1, (insert Project #1, 2, 3, 4, or 5).

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001. The requirements requested on Form PHS 5161–1 were approved and assigned OMB control number 0348–0043.

C. Legend

Unless disclosure is required by FOIA as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: March 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–9098 Filed 4–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0115]

Risk Management of Prescription Drugs; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Center for Drug Evaluation and Research (CDER) of the Food and Drug Administration (FDA) is announcing a public hearing on the agency's approach to risk management of prescription drugs. In May 1999, FDA published ''Managing the Risks From Medical Product Use,'' which laid a framework for the agency's efforts to reduce the risks involved with medical product use. The public hearing announced in this notice is part of the agency's ongoing efforts to improve CDER's risk communication and to develop new and effective risk management tools. The purpose of the

hearing is to obtain public input on improving risk management of prescription drugs; identify stakeholders for further collaboration on development and implementation of risk management tools; obtain greater understanding of the strengths and weaknesses of existing risk management tools, which should help guide improvements or creation of new tools; and obtain input on strategies to assess the effectiveness of tools used for risk management of prescription drugs.

DATES: The public hearing will be held on Wednesday, May 22, 2002, from 8 a.m. to 4:30 p.m. Submit written or electronic notices of participation and comments for consideration at the hearing by April 23, 2002. Written or electronic comments will be accepted after the hearing until June 21, 2002.

ADDRESSES: The public hearing will be held at the National Transportation Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594 (Phone: 202–314–6421; Metro: L'Enfant Plaza Station on the green, yellow, blue, and orange lines). Submit written or electronic notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; email: *FDADockets@oc.fda.gov*; or on the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above) and on the Internet at *http://www.fda.gov/ohrms/dockets*.

FOR FURTHER INFORMATION CONTACT: Christine Bechtel, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5458, *bechtelc@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA approves medical products when the agency determines that the benefits of using a product outweigh the risks for the intended population and use. The product must be labeled with adequate information on its risks and benefits. The labeling must also provide sufficient information to ensure the product is safely used to produce the stated effect. Labeling is given considerable emphasis because it is the primary tool the agency uses to communicate risk and benefit to the public. Once the medical product is marketed, however, ensuring safety becomes a complicated responsibility shared by many parties, including health care providers, manufacturers, patients, and others. New information on safety that needs dissemination often arises postmarketing. Occasionally, a product's safety and efficacy profile changes, resulting in the need for safety intervention beyond labeling (*e.g.*, to protect the public or a population subgroup from increased risks). When such situations arise, effective risk management tools are needed.

Many critics have expressed concern that the current risk management system for drugs is inadequate. The number of drugs available on the market is increasing along with their complexity. The potential for interactions among various treatments is also growing and is beyond the ability of many busy physicians to track. In addition, changes in the health care delivery system, advertising, third-party payer programs, and other forces are challenging the current risk management system. Recent studies of the effectiveness of FDA's traditional risk communication tools (*i.e.*, the ''dear health care practitioner letter'' and the black box warning in product labeling) have demonstrated that these tools have limited effect in changing the behavior of health care providers with regard to prescribing and monitoring patients' health (Refs. 1, 2, and 3).

II. Scope of the Hearing

FDA is interested in obtaining public comment on the following issues:

A. Risk Communication

- What improvements are needed to enhance communication about safety issues for drugs?
- What improvements are needed to communicate information about the efficacy of drugs?
- What are the strengths and weaknesses of the agency's current risk labeling approach?
- How can communication with health care practitioners become more effective (*e.g.*, improve the ''dear health care practitioner letter'' and other current communication strategies)?
- What other steps should FDA be taking to communicate risks and benefits?

B. Tools for Risk Management

- What methods should FDA be using to manage risk?
- What new tools can be created to better address specific drug risks?
- What are the advantages and disadvantages of restricted marketing as a risk management tool?
- What risk interventions can FDA initiate for pharmacists, physicians, patients, and drug manufacturers?

C. Evaluation of Risk Management Strategies and Interventions

- What risk management interventions should be studied for effectiveness?
- What criteria should be used to judge if a risk management intervention is effective?

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or his designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Dockets Management Branch (*see* **ADDRESSES**) before April 23, 2002. To ensure timely handling, any outer envelope should be clearly marked with the docket number listed at the head of this notice along with the statement ''Risk Management of Prescription Drugs Hearing.'' Groups should submit two written copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (*e.g.*, the organization paying travel expenses or fees), if any; a brief summary of the presentation; and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under the docket number listed at the head of this notice.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt

the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (*see* **ADDRESSES**).

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (*see* **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic notices of participation and comments for consideration at the hearing by April 23, 2002. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until June 21, 2002. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (*see* **ADDRESSES**) by June 21, 2002. Two copies of any written comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number at the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Jones, J. K., D. Fife, S. Curkendall et al., ''Coprescribing and Codispensing of Cisapride and Contraindicated Drugs,'' *Journal of the American Medical Association*, 286:1607–1609, 2001.

2. Graham, D. J., C. R. Drinkhard, D. Shatin et al., ''Liver Enzyme Monitoring in Patients Treated With Troglitazone,'' *Journal of the American Medical Association*, 286:831–833, 2001.

3. Smalley, W., D. Shatin, D. K. Wysowski et al., ''Contraindicated Use of Cisapride: Impact of Food and Drug Administration Regulatory Action,'' *Journal of the American Medical Association*, 284: 3036–3039, 2002.

Dated: April 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–9096 Filed 4–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Using Modulators of Extracellular Adenosine or an Adenosine Receptor to Enhance Immune Response and Inflammation

Michail V. Sitkovsky, Akio Ohta (NIAID),

DHHS Reference No. E–051–02/1 filed 19 Dec 2001,

Licensing Contact: Cristina Thalhammer-Reyero; 301/496–7736 ext. 263; e-mail: *thalhamc@od.nih.gov.*

Local inflammation processes are crucially important in the host defense against pathogens and for successful immunization because pro-inflammatory cytokines are necessary for initiation and propagation of an immune response. However, normal inflammatory responses are eventually terminated by physiological termination mechanisms, thereby limiting the strength and duration of immune responses, especially to weak antigens. The inventors have shown that adenosine receptors play a critical and non-redundant role in down-regulation of inflammation in vivo by acting as the physiological termination mechanism that can limit the immune response. The adenosine A2a and A3a receptors have been identified as playing a critical role in down-regulation of the immune response during inflammation.

This invention claims methods for inhibiting signaling through the adenosine receptor to prolong and intensify the immune response. The method involves administering either an adenosine-degrading drug or an adenosine receptor agonist. Also claimed in the invention is use of adenosine receptor agonists or adenosine-degrading drugs as vaccine adjuvants and methods for accomplishing targeted tissue damage such as for tumor destruction. This invention is further described in Ohta A et al., ''Role of G-protein-coupled adenosine receptors in downregulation of inflammation and protection from tissue damage,'' Nature 2001 Dec 20–27;414(6866):916–20.

Novel Spore Wall Proteins and Genes From Microsporidia

J. Russell Hayman, John T. Conrad, Theodore Nash (NIAID),

DHHS Reference No. E–125–01/0 filed 04 Dec 2001,

Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: *soukasp@od.nih.gov.*

Microsporidia are obligate intracellular organisms that infect a wide variety of animals ranging from insects and fish to mammals, including humans. Of over 1000 microsporidial species identified, at least thirteen are known to infect humans. The species most commonly identified in humans are members of the families Encephalitozoonidae and Enterocytozoonidae. In humans, microsporidiosis is most often found in HIV/AIDS patients and commonly results in severe diarrhea and wasting. However, microsporidiosis also occurs in immunocompetent individuals and common farm animals. The disease is

transmitted via environmentally resistant spores.

This invention claims two spore wall constituents (SWP1 and SWP2) from the microsporidian *Encephalitozoon intestinalis* and the genes from which these two proteins are derived. Further claimed are methods of diagnosing and treating microsporidiosis in a subject. Also claimed are methods for producing an immunoprotective response in a subject. SWP1 is expressed on the surfaces of developing sporonts and SWP2 is expressed on the surfaces of fully formed sporonts. Therefore, they should be exposed to the host cell environment. Based on this theory, antibody responses to SWP1 and SWP2 were addressed in an in vivo mouse model. Immunoprecipitation and Western blot analyses indicated that SWP1 and SWP2 are immunogenic in mouse infections.

This invention is further described in Hayman et al., ''Developmental expression of two spore wall proteins during maturation of the microsporidian *Encephalitozoon intestinalis,*'' *Infect. Immun.* 2001 Nov;69(11):7057–66.

Activated Dual Specificity Lymphocytes and Their Methods of Use

P. Hwu, M.H. Kershaw, and S.A. Rosenberg (NCI),
U.S. Utility Patent Application 09/803,578 filed 09 Mar 2001,
Licensing Contact: Jonathan Dixon; 301/496–7735 ext. 270; *e-mail: dixonj@od.nih.gov.*

While T-cell therapies can work in some patients, the use of these cells to treat cancer and viral diseases is often limited by the poor survival and proliferation of these cells in vivo. Cancer clinical trials have demonstrated that the transferred lymphocytes can recognize tumors in vitro, but human subjects often do not respond to infusion. Gene marking studies have demonstrated that the transferred cells often survive for only short periods of time in vivo, thus limiting their effectiveness.

The current invention relates to a method that using genetic modification to generate leukocytes with multiple specificities. To improve proliferation and activation of the transduced T cells, cell transfer is combined with stimulation using a second antigen. Thus T cells are stimulated through their native T cell receptor, using a powerful immunogen, which facilitates expansion and activation. In experiments, mice receiving alloantigen stimulated cells rejected tumors while mice receiving the unstimulated cells did not reject the tumor cells.

This technology represents a potential therapy for a wide variety of malignancies, and because of the genetic modification used, this therapy will be applicable to patients of any MHC type.

Effect of COMT Genotype on Frontal Lobe Function

Daniel R. Weinberger (NIMH), Michael F. Egan (NIMH), Terry E. Goldberg (NIMH), David Goldman (NIAAA), Joseph H. Callicott (NIMH),
DHHS Reference No. E–174–00/0 filed 11 May 2001,
Licensing Contact: Norbert Pontzer; 301/496–7736, ext. 284; *e-mail: np59n@nih.gov.*

Abnormalities of prefrontal cortical function are prominent features of schizophrenia and have been associated with genetic risk, suggesting that susceptibility genes for schizophrenia may impact on the molecular mechanisms of prefrontal function. A potential susceptibility mechanism involves regulation of prefrontal dopamine, which modulates the response of prefrontal neurons during working memory. The Catechol-o-methyltranferase (COMT) gene contains a G to A mutation which causes a substitution of methionine for valine at codon 158. The met allele has a four fold reduction in enzyme activity which leads to an increase in prefrontal cortical dopamine levels. NIH investigators observed that the functional polymorphism in the gene encoding COMT is associated with variations in executive function and efficiency of working memory in normal controls and schizophrenic patients.

The invention provides a method of detecting impaired prefrontal cognitive function in a subject individual comprising determining the individual's COMT genotype and associating a high activity val allele with impaired prefrontal cognitive function and a low activity met allele with enhanced prefrontal cognitive function. The COMT genotype can be determined using a relatively simple restriction fragment length polymorphism analysis after PCR amplification of the polymorphic region of exon four since the *met* substitution introduces a NlaIII restriction site into the allele. Clinical medical tests to determine prognosis in schizophrenia and other conditions associated with the polymorphism would thus be possible. The invention also provides for treating patients with COMT inhibitors after tests that predict the response of a patient with schizophrenia, other neurological disorders or aging related declines in cognition to administration of a COMT inhibitor.

Identification of a Transforming Fragment of Herpes Simplex Type 2 and Detection thereof in Clinical Specimen

Joseph A. DiPaolo (NCI), Allegria Dessous-Elbaz, Francois Coutlee,
U.S. Provisional Application SN 60/020,957 filed 01 Jul 1996; PCT Application No. PCT/CA97/00470 filed 30 Jun 1997; U.S. Patent Application SN 09/202,918 filed 23 Dec 1998; Canadian Patent Application SN 2,259,657 filed 23 Dec 1998,
Licensing Contact: Uri Reichman; 301/496–7736 ext. 240; e-mail: *reichmau@od.nih.gov.*

The present invention relates to novel diagnostic and therapeutic methods for Herpes Simplex Virus Type 2 (HSV–2). HSV–2 infects approximately one fifth of adults in the United States and is the most common cause of genital ulceration. The invention relates to the detection of HSV–2 based on a transforming nucleic acid sequence and its protein product. This DNA sequence harbors the potential to induce the tumorigenic transformation of normal cells in in vitro and in vivo assays and thus will be useful as a means of prognostic evaluation in predicting the development of genital or cervical cancer. Current HSV–2 diagnostic tests relying on tedious viral culture and/or immunoassays do not have the sensitivity and the specificity essential for diagnosis. Using PCR, the current invention will provide a superior method for viral detection and subtyping. In addition the in vivo administration of the antisense primers corresponding to the transforming DNA sequence and the use of antibodies against the protein product can be powerful therapeutic treatments against HSV–2.

Mitochondrial Topoisomerase I

Yves Pommier and Hong-Liang Zhang (NCI),
DHHS Reference No. E–099–01/0 filed 16 Feb 2001,
Licensing Contact: Matthew Kiser; 301/496–7056 ext. 223; e-mail: *kiserm@od.nih.gov.*

This invention describes a gene that codes for a human topoisomerase that exclusively acts on mitochondrial DNA, and is the first described mitochondrial topoisomerase. Since a number of diseases are caused by mitochondrial malfunction, this gene could form the basis of a number of different therapies. For instance, mitochondrial malfunctions could lead to disturbances in energy metabolism and programmed cell death (apoptosis). This

mitochondrial gene product could thus lead to new diagnoses and therapies centered on apoptosis, which is a critical event in cancer and autoimmune disorders.

In addition to the gene sequence, the patent application covers the encoded protein, protein fragments, monoclonal and polyclonal antibodies, and methods to alter the level of this gene's expression. Also included in the claims are methods to identify activators or inhibitors of the topoisomerase enzyme. NIH invites commercial partners to apply for either an exclusive or non-exclusive license to this technology. We also invite companies who may be interested in commercializing the topoisomerase or the antibodies for research reagent use.

This abstract replaces one published in the **Federal Register** on January 28, 2002 (67 FR 3905).

Dated: April 3, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–9094 Filed 4–12–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 8, 2002.

Time: 3:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael J. Kozak, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9608, Bethesda, MD 20892–9608, 301–443–6471, kozakm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 5, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–9090 Filed 4–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 11, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: April 8, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–9091 Filed 4–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in U.S. Patent Application Serial No. 09/185,408 filed May 6, 1996, and U.S. Patent Application Serial No. 10/057,113 filed January 24, 2002, entitled ''Glycoprotein Hormone Superagonists,'' to Trophogen, having a place of business in the state of Maryland. The field of use may be limited to the treatment of human infertility, Graves Disease, thyroid cancer, and contraceptives. The United States of America is the assignee of the patent rights in this invention. This announcement replaces three previous notices to grant an exclusive license to this technology: July 19, 1999 (64 FR 38685), February 7, 2000 (65 FR 5878–5879), and May 15, 2001 (66 FR 26871).

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before June 14, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Marlene Shinn, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3821; Telephone: (301) 496–7056, ext. 285; Facsimile: (301) 402–0220; E-mail: *MS482M@NIH.GOV.*

SUPPLEMENTARY INFORMATION: This invention relates generally to modified glycoprotein hormones and specifically to modifications to a human

glycoprotein, which create superagonist activity. Glycoprotein hormones comprise a family of hormones, which are structurally related heterodimers consisting of a species common α sub-unit and a distinct β sub-unit that confers the biological activity for each hormone. However, this invention is not limited to specific hormones, specific subjects such as humans as well as non-humans mammals, specific amino acids, specific clinical conditions, specific analogs, or specific methods.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 3, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–9093 Filed 4–12–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Methamphetamine Abuse Treatment—Special Studies (MAT–SS)—New—The Methamphetamine Abuse Treatment—Special Studies (MAT–SS) project is a family of coordinated studies funded by SAMHSA's Center for Substance Abuse Treatment (CSAT) that will serve as a follow-up to the CSAT Methamphetamine Treatment Project (MTP). The MTP was conducted to compare the outcomes of the Matrix Model of methamphetamine treatment with Treatment-as-Usual in and across multiple treatment sites, and to assess the feasibility and outcomes generated by a technology transfer of the Matrix Model. Participants included 150 methamphetamine dependent clients recruited at each treatment site who were randomly assigned to one of the treatment conditions. Participants, diverse in demographic characteristics, and in individual and environmental circumstances, were evaluated at admission, weekly during treatment, at discharge, and at 6 and 12 months after treatment admission. Participating treatment sites include eight programs in seven geographical areas: Billings, Montana; Honolulu, Hawaii; and Concord, Costa Mesa, San Diego, Hayward, and San Mateo, California.

The family of studies included in the MAT–SS project will address diverse issues associated with the phenomena of methamphetamine dependence. The Multi-Year Methamphetamine Treatment Follow-up Study will assess the long-term outcome and functioning of individuals who previously participated in treatment for methamphetamine dependence. The study will utilize a 36-month post-intake, face-to-face, one-on-one structured interview. Multiple measures typically utilized in substance abuse research with established psychometric properties will be employed to assess the longitudinal course of methamphetamine dependence and its consequences. Follow-up participants will also be interviewed to collect medical, neurological, and psychiatric data.

The Adherence to Manualized Treatment Protocols Over Time Study will assess issues associated with the adoption of the Matrix Model of treatment and/or Matrix treatment components after the formal MTP study period has ended, specifically addressing adherence to the manualized treatment protocol. Interviews of both staff and clients will utilize a semi-structured, face-to-face format.

Finally, The Cost Analysis of Outpatient Methamphetamine Treatment Study will evaluate the cost effectiveness of both the Matrix and Treatment-as-Usual treatment conditions in each treatment site. Two data collection methods will be utilized to collect information from both administrator interviews and review of administrative and financial records.

The conceptual underpinning of the MAT–SS project is a recognition by SAMHSA and leading experts in the field that escalating methamphetamine abuse nationwide necessitates a longitudinally focused investigation addressing the process, nature, and consequences of methamphetamine dependence. The overall goals of the MAT–SS project are to document the longitudinal process of addiction and recovery in methamphetamine-dependent individuals, ascertain the feasibility and success of implementing a manualized treatment protocol in community-based treatment settings, and evaluate the cost effectiveness of various treatments for methamphetamine dependence. The following table summarizes the burden for this project.

	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Follow-up client interviews	1,016	1	3.0	3,048
Follow-up interviews/exams	(1,016)	1	2.0	2,032
Treatment adherence interviews—Clients	253	2	1.5	759
Treatment adherence interviews—Staff	64	2	1.5	192
Cost analysis interviews—Executive Directors	8	2	.5	8
Cost analysis interviews—Finance Director/CFO	8	2	1.0	16
Cost analysis interviews—Clinical Director	8	2	1.5	24
Total	1,357			6,079
3-year Annual Average	452			2,026

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 9, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–9012 Filed 4–12–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–13]

Notice of Submission of Proposed Information Collection to OMB; Interstate Land Sales Registration and Consumer Notification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0243) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number 202–395–96974; E-mail *Joseph F. Lackey_Jr@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: FHA Fee Inspector Panel Application Packages.

OMB Approval Number: 2502–0243.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, et seq., requires developers to register subdivisions of 100 or more non-exempt lots with HUD. The development must give each prospective purchaser a property report, meeting HUD's requirements, before the purchaser signs a sales contract or agreement for sale or lease.

Respondents: Business or other for-profit entities.

Frequency of Submission: On Occasion and Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	5,720	136,435	....	0.14		19,579

Total Estimated Burden Hours: 19,579.

Status: Extension of a currently approved collection.

Authority: Sections 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 5, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–9001 Filed 4–12–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Nonferrous Metals Surveys.

Current OMB approval number: 1028–0053.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonferrous and related metals. This information will be published as monthly, quarterly, and annual reports for use by Government agencies, industry, and the general public.

Bureau form number: Various (32 forms).

Frequency: Monthly, Quarterly, and Annual.

Description of respondents: Producers and Consumers of nonferrous and related metals.

Annual Responses: 5,897.

Annual burden hours: 4,791.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 02–9099 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Snoqualmie Indian Tribe and the State of Washington, which was executed on February 15, 2002.

DATES: This action is effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: April 4, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–9008 Filed 4–12–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–02–1330–EN]

Notice of Availability of Final Environmental Impact Statement and Record of Decision for 3R Minerals Coal Bed Canyon Mine

AGENCY: Department of the Interior, Bureau of Land Management, Utah State Office.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, a Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for 3R Minerals Coal Bed Canyon Mine proposal on lands within Grand Staircase-Escalante National Monument, have been prepared and are available for review. The FEIS and ROD are being released concurrently for review as allowed by 40 CFR Sec. 1506.10(b)(2) for agencies that have a formally established appeal process.

The FEIS analyzes the anticipated impacts of 3R Minerals' proposed action and three alternatives to the proposal. The Record of Decision documents the decision of the Utah State Director of the Bureau of Land Management to approve the Notice of Intent to Revise Mining Plan of Operations according to Alternative B, the BLM Preferred Alternative, as described in the FEIS and subject to the mitigation, conditions of approval and monitoring plan described in the ROD.

DATES: The decision may be appealed as provided for in 43 CFR part 4. If an appeal is taken, the notice of appeal (and if also submitted, a petition for stay) must be post marked or received at the Utah State Office address shown below within 30 days of publication of this **Federal Register** Notice. Procedures for filing an appeal or petition for stay are described in the ROD.

ADDRESSES: Copies of the FEIS and ROD may be obtained from the following Bureau of Land Management Locations: Grand Staircase-Escalante National Monument Headquarters, 180 West 300 North, Kanab, Utah 84741; Grand Staircase-Escalante National Monument Escalante Field Station, 755 West Main, Escalante, Utah; Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah. Copies may be obtained by mail by contacting the Monument Headquarters at the above address or telephoning 435–644–4300.

Any notice of appeal or petition for stay must be filed with the Utah State Director, Bureau of Land Management, P.O. Box 45155, Salt Lake City, UT 84145–0155.

FOR FURTHER INFORMATION CONTACT: Paul Chapman, Grand Staircase-Escalante National Monument Headquarters, 435–644–4309, or Kate Cannon, Monument Manager, Grand Staircase-Escalante National Monument Headquarters, 435–644–4330.

SUPPLEMENTARY INFORMATION: Mining activity is based on a mineral lease issued by the Utah School and Institutional Trust Lands Administration (SITLA) when the site was still State land. Although the lease was issued after the Monument was established, it occurred on State lands which were not affected by the Presidential Proclamation. 3R Minerals was granted approval to mine by appropriate State agencies and has been conducting limited mining activity on the site. Ownership of the land was exchanged to the Federal Government via the Utah Schools and Lands Exchange Act of 1998. Language in that act preserved 3R Minerals' existing right to mine.

On June 15, 1999, the BLM received 3R Minerals' Notice of Intent to Revise Mining Operations. Under the Lease and SITLA rules, any proposed changes to 3R Minerals' approved Plan of Operations would be subject to approval by the BLM. Such a decision is a Federal action to which the National Environmental Policy Act of 1969 (NEPA) applies. Based upon this review, an Environmental Impact Statement (EIS) was prepared to assess potential impacts to resources.

The SITLA Lease grants a valid and existing right for use of the surface estate if the action to be taken is reasonably necessary and expedient for the economic operation of the leasehold and furthers the production, treatment and disposition of the leased substances. The proposed modifications are all standard industry practices and are reasonably necessary to further the production, treatment and disposition of the leased substances. Therefore, the modification to the Notice of Intent to Commence Mining Operation's Plan of Operations is a reasonable exercise of the rights granted by Article IV of the Lease and is considered within the proponent's valid existing rights.

Environmental impacts from the proposed project and alternatives were considered in a Draft Environmental Impact Statement (DEIS), prepared and released for public review on October 6, 2000. The DEIS was reviewed by other Federal Agencies, State agencies, local government entities, and private organizations and individuals. Based on comments received on the DEIS, modifications and revisions were made

and a Final Environmental Impact Statement (FEIS) was prepared. Details of the project, issues identified during the analysis process, alternatives, impacts, mitigation, and results of public participation are presented in the FEIS.

Dated: December 12, 2001.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–9047 Filed 4–12–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–63386]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec 5;
Lot 14.
Containing 2.5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement 50 feet in width along the East boundary, and 30 feet in width along the South boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for public utility purposes which have been granted to Nevada Power Company/Sprint by Permit No. N–58081, Clark County by permit No. N–60727 & N–61169, and the City of Las Vegas by permit No. N–62866, under the Act of October 26, 1978 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: March 5, 2002.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–8888 Filed 4–12–02; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–939–1220–00 PD; G0–00]

Notice of Interim Final Supplementary Rules on the Piedras Blancas Light Station in California

AGENCY: Bureau of Land Management, Bakersfield Field Office, California, Interior.

ACTION: Notice of interim final supplementary rules for public land within the Piedras Blancas Light Station property, San Simeon, California.

SUMMARY: These supplementary rules are being established as interim final supplementary rules to provide immediate protection for cultural, historic, and natural features within the recently acquired section of public land at Piedras Blancas. This area contains sensitive habitat, protected marine mammals, cultural sites, and historic buildings. These supplementary rules serve to protect these features. The supplementary rules listed below are similar to rules in effect within most parks, nature preserves, and recreation areas.

DATES: The following supplementary rules are being published on an interim final basis, effective April 15, 2002. You may send your comments about these supplementary rules to the address below. Comments must be received or postmarked by June 14, 2002.

ADDRESSES: Mail: Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA, 93308. Personal or messenger delivery: Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA, 93308.

FOR FURTHER INFORMATION CONTACT: Ron Fellows, Field Manager, Bakersfield Field Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6000.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures:

Please submit your comments on issues related to the supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the supplementary rules should be

specific, should be confined to issues pertinent to the supplementary rules, and should explain the reasons for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposed rule that you are addressing. BLM may not necessarily consider, or include in the Administrative Record, comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

Discussion of the Rules

The supplementary rules apply to the land and buildings at the Piedras Blancas Light Station located as follows: Mount Diablo Meridian Township 26 South, Range 6 East, U. S. Lighthouse Reserve and any adjacent parcels of public land managed by the BLM. BLM has determined these supplementary rules necessary to protect the area's natural, cultural, and historic resources and to provide for safe public recreation, public health, and reduce the potential for damage to the environment and to enhance the safety of visitors and neighboring residents.

Procedural Matters

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

BLM has determined that the supplementary rules are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the supplementary rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2). These rules are limited in scope to a small section of public land and are intended to establish rules of conduct and acceptable behavior at the site for the protection of resources and the visiting public.

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. These supplementary rules do not require funding or resources from State, Local, or tribal governments. These supplementary rules do not impact private property or property rights nor are they intended to deny or constrain any valid existing right. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules are applicable only on public land managed by the BLM and do not extend to adjacent private property. No taking of private property is contemplated in these supplementary rules. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules are intended to protect property, resources, and the visiting public on a designated area of public land. The scope and effect of these supplementary rules are limited to those public purposes and do not redefine or impact established governmental structures, responsibilities, policies, or procedures. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules will not unduly burden the judicial system and that these supplementary rules meet the requirements of sections 3(a) and 3(b)(2) of the Order. These supplementary rules have been written in plain text and are clearly understandable.

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. These supplementary rules do not impact tribal lands nor are they intended to limit or interfere with any right or privilege granted to Native Americans.

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

The principal author of these supplementary rules is Ron Fellows, Field Office Manager of the BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

For the reasons stated in the preamble, and under the authorities cited below, the BLM State Director, California, issues the following supplementary rules.

Dated: January 28, 2002.

James Wesley Abbott,

Acting State Director, California.

Note: These rules will not appear in the Code of Federal Regulations.

Supplementary Rules for Public Lands at the Piedras Blancas Light Station

Public Land Order 7501, published in the **Federal Register** on October 12, 2001 (66 FR 52149), authorized the Bureau of Land Management to manage the Piedras Blancas Light Station on behalf of the American people. The supplementary rules listed below are established under authority of 43 CFR 8364.1, 43 CFR 8365.1–6, and 43 CFR 8341.2(b).

1. You must not enter the lighthouse, other building or structure, grounds, beach area, trails, and access roads unless you are part of a scheduled tour, or at scheduled times as determined by the BLM. You must not camp or stay overnight without a permit from the BLM. You must not leave a scheduled tour and enter areas not covered by the tour.

2. You must not take, disturb, or harass wildlife. You must not approach elephant seals in a manner likely to disturb, alarm, or harm the animals. You must not collect or cut vegetation or collect wildlife except under the terms and conditions of a permit issued by the BLM.

3. You must not enter an area posted as closed. You must not walk, hike, or ride a bicycle on areas or trails not designated for this purpose.

4. You must not drive off the designated access roads and designated parking areas. You must not park a vehicle in a manner which prevents the movement of other vehicles. You must not park a vehicle in an area posted as a No Parking zone. You must not drive a vehicle faster than 15 miles per hour along the entrance road to the area.

5. You must not collect natural features such as rocks and minerals without a permit issued by the BLM. You must not conduct research projects and scientific studies without a permit from the BLM.

6. You must not allow domestic animals or pets to be on the site. Seeing-eye and hearing-ear dogs, and pets belonging to the resident staff are excepted. Domesticated pets belonging to the resident staff must be under control of the owner at all times.

7. You must not kindle, start, or attend a fire. You must not use any cooking device on the grounds of the area. You must not throw, place, discard or store litter, refuse, waste, garbage, peelings, pits, or wrappers anywhere except in litter receptacles or litter bags.

8. You must not be under the influence of drugs (as defined by Section 11550 of the California Health and Safety Code) or alcohol (blood alcohol level of 0.8%) within the area.

9. You must not discharge any firearms (except for law enforcement officials in the performance of their duties), air guns, slingshots or use any projectile launching device.

10. You must not engage in fighting, physically threatening or violent behavior.

11. You must not violate any of the laws of the State of California or ordinances of the County of San Luis Obispo. You must not violate regulations of the National Oceanographic and Atmospheric Administration which are in effect within the area.

Supplementary Rules 1 Through 5 Do Not Apply to:

1. Any public official in the performance of fire, emergency, rescue, medical, law enforcement or other similar duty.

2. Any Bureau of Land Management, U.S. Coast Guard, or other authorized personnel while in the performance of their duties, except as restricted by the BLM.

3. Any person or member of a group or institution expressly authorized by permit, license agreement, or other similar authorization while in the performance of activities covered by the authorization, except as restricted by the BLM.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, if you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

[FR Doc. 02–8887 Filed 4–12–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Arkansas Archeological Survey, Fayetteville, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Arkansas Archeological Survey professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1967, human remains representing a minimum of one individual from Barkman Mound (3CL7), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1969, human remains representing a minimum of one individual were collected from Rorie Place (3CL23), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1969, human remains representing a minimum of one individual were collected from Old Salt Works (3CL27), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1969, human remains representing a minimum of one individual were collected from the Flenniken site (3CL55), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1969, human remains representing a minimum of one individual from

Moore Mound (3CL56), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present. Based on material culture, the Moore Mound has been identified as a Social Hill phase (A.D. 1500-1600) occupation.

In 1969, human remains representing a minimum of one individual from Malvern Sewage Pond (3HS36), Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1970, human remains representing a minimum of one individual from Allen's Field (3CL97), Clark County, AR, were collected by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1970, human remains representing a minimum of one individual from the Myers site (3HS38), Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1971, human remains representing a minimum of two individuals from the Kirkham Place/May Mound site (3CL29), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. No associated funerary objects are present.

In 1971, human remains representing a minimum of one individual from Shepherd Mound (3CL39), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1971, human remains representing a minimum of one individual were recovered from the Bill Duke #3 site (3CL90), Clark County, AR, during rescue excavations conducted by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1971, human remains representing a minimum of one individual from site 3GR7, Grant County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1971, human remains representing a minimum of one individual from Bob Fisher Mound (3HS22), Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1971, human remains representing a minimum of one individual were collected from the ''Middle of the Road'' site (3PI24), Pike County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1972, human remains representing a minimum of five individuals from the Middle Meadow site (3HS19), Hot Spring County, AR, were acquired by the Arkansas Archeological Survey. This collection consists of human remains recovered by Arkansas Archeological Survey personnel and donations to the Arkansas Archeological Survey by unknown donors. No known individuals were identified. No associated funerary objects are present.

In 1972, human remains representing a minimum of three individuals from the Sam Hedges site (3HS60), Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. No associated funerary objects are present. Base on material culture, site 3HS60 has been dated to the Caddo IV (A.D. 1500-1700) and Social Hill phase (A.D. 1500-1600) periods.

In 1973, human remains representing a minimum of one individual from the Old Salt Works site (3CL27), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing a minimum of two individuals from site 3CL63, Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. No associated funerary objects are present.

In 1973, human remains representing a minimum of one individual from H. Jones Place (3CL79), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing a minimum of 24 individuals from site 3HS60, Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No knows individuals were identified. No associated funerary objects are present. Based on material culture, site 3HS60 has been identified as a Social Hill phase (A.D. 1500-1600) to Caddo IV (A.D. 1500-1700) period settlement.

In 1973, human remains representing a minimum of one individual from an unprovenienced site along the Little Missouri River, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1974, human remains representing a minimum of 14 individuals from Saline Bayou (3CL24), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. No associated funerary objects are present. Based on material culture, the Saline Bayou site has been identified as a Caddoan-Mid-Ouachita phase (A.D. 1400-1500) occupation.

In 1974, human remains representing a minimum of two individuals from Moore Mound (3CL56), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. No associated funerary objects are present. Based on material culture, the Moore Mound has been identified as a Social Hill phase (A.D. 1500-1600) occupation.

In 1974, human remains representing a minimum of 22 individuals from Copeland Ridge (3CL195), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. No associated funerary objects are present. Based on material culture, the Copeland Ridge site has been identified as a Social Hill phase (A.D. 1500-1600) to the Caddo IV period (A.D. 1500-1700) occupation.

In 1974, human remains representing a minimum of six individuals from Denham Mound (3HS15), Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individuals were identified. The one associated funerary object is a shell hoe. Based on material culture, the Denham Mound site has been identified as a Caddo III (A.D. 1400-1500) phase through Caddo IV (A.D. 1500-1700) phase site.

In 1974, human remains representing a minimum of one individual from Upper Meador Farm (3HS33), Hot Spring County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1975, human remains representing a minimum of one individual from Smith Mound (3CL162), Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was

identified. No associated funerary objects are present.

In 1975, human remains representing a minimum three individuals were recovered from the Standridge site (3MN53), Montgomery County, AR, during excavations conducted by the Arkansas Archeological Survey for the Arkansas Archeological Society Training Program. No known individuals were identified. The 61 associated funerary objects include arrow points, shell beads, a celt, a chipped biface, a ceramic bottle, ceramic jars, ceramic bowls, ceramic vessels, turtle shell objects, bone pins, a worked deer ulna, a beaver incisor, river mussel shells, a lump of clay, turquoise beads, and a shell cup. Based on the types of associated funerary objects, these burials have been dated to the Caddo III period (A.D. 1400-1500).

In 1978, human remains representing a minimum of one individual from the Duval site (3GR61), Grant County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from Old Salt Works (3CL27), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from the surface of the Kirkham Place/May Mound site (3CL29), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were collected from the surface of Kirkham Place (3CL29), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from Hardin Mound (3CL196), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from the Hardin #3 site (3CL320), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from Cooper Place (3HS1), Hot Spring County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from the Henson site (3MN280), Montgomery County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from the Joe Walker #10 site (3SA127), Saline County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1979, human remains representing a minimum of one individual were collected from the Joe Walker #11 site (3SA128), Saline County, AR by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1980, human remains representing a minimum of one individual were collected from the Allen's Field site (3CL97), Clark County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1980, human remains representing a minimum of one individual were collected from site 3HS147, Hot Spring County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

In 1987, human remains representing a minimum of 24 individuals were recovered from the Hardman site (3CL418), Clark County, AR, during legally authorized excavations conducted by the Sponsored Research Program of the Arkansas Archeological Survey under contract to the Arkansas Highway and Transportation Department. No known individuals were identified. The 106 associated funerary objects include arrow points, ceramic bottles, ceramic bowls, a ceramic cup, ceramic jars, a green clay patty, river cobbles, freshwater bivalve shells, shell beads, and shell discs. Based on the types of associated funerary objects, these burials have been dated to the Late Caddo, Deceiper phase (A.D. 1600-1700).

In 1989, human remains representing a minimum of one individual from an unprovenienced site near Arkadelphia, Clark County, AR, were donated to the Arkansas Archeological Survey by an unknown donor. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual from an unprovenienced site in southwestern Arkansas came into the possession of the Arkansas Archeological Survey under unknown circumstances. No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing a minimum of one individual were collected from site 3MN8, Montgomery County, AR, by Arkansas Archeological Survey personnel. No known individual was identified. No associated funerary objects are present.

Archeological evidence indicates that approximately 1,000 years ago, a coherent pattern of material culture characteristics, settlement patterns, mound building, and burial practices emerged across southwestern Arkansas and neighboring states that continues (with localized changes in attributes such as pottery shapes, decorative design choices, and arrow point shapes) until the 18th century. Direct historic evidence from sites in neighboring States indicates that this lifeway was directly ancestral to the historic Caddo cultural tradition. Therefore, archeologists have identified these late pre-contact and proto-historic sites and material culture as ''Caddoan'' or ''Caddo,'' although no unequivocally documented historic Caddo settlements have been found in the State of Arkansas.

The geographic distribution of sites with a distinct collection of artifacts, features, burial practices, and mound construction are found throughout southwestern Arkansas south and west of the Arkansas River, and as far south on the Ouachita and Saline Rivers as the transition zone between the western Gulf Coastal plain and the Felsenthal lowland extension of the Lower Mississippi Valley ecosystem. This area is currently considered coincident with the distribution of ancestral Caddo tradition sites in Arkansas, and in cases where diagnostic artifacts are few or unreported, there is a presumptive assumption that sites of this time period are ancestral Caddoan. After the beginning of the 18th century, the possibility that Native sites (or sites of Old World populations) are non-Caddo increases.

The human remains listed here are from sites that are identifiable as ancestral Caddoan, Mississippian period and protohistoric era settlements. These evidences may be from surface

collections and/or collections made through research independent of the disinterment of these individuals. Therefore, although most of these individuals had no associated funerary objects, general geographic location and archeological data; existing evidence from the sites has been used to associate these remains with the Caddo Indian Tribe of Oklahoma.

Based on the above-mentioned information, officials of the Arkansas Archeological Survey have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 140 individuals of Native American ancestry. Officials of the Arkansas Archeological Survey also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 168 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Arkansas Archeological Survey have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Thomas Green, Director, Arkansas Archeological Survey, 2475 North Hatch Avenue, Fayetteville, AR 72704, telephone (501) 575-3556, before May 15, 2002. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward

Dated: January 22, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–9095 Filed 4–12–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1351]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

DATES: A meeting of this advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will take place in the District of Columbia, beginning at 10 a.m. on Friday, May 17, 2002, and ending at noon, ET.

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Daryel Dunston, Program Manager, Juvenile Justice Resource Center at (301) 519–6473. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. § 5601 *et seq.*). This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5 p.m., ET, on Friday, May 3, 2002. For security purposes, picture identification will be required.

Dated: April 9, 2002.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–9004 Filed 4–12–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Youth Development Practitioner Apprenticeship (YDPA) Initiative; Availability of Funds and Solicitation of Grant Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

This Notice Contains All of the Necessary Information and Forms Needed To Apply for Grant Funding

SUMMARY: The U.S. Department of Labor, Employment and Training Administration, announces the competitive grants to be awarded under the Youth Development Practitioner Apprenticeship (YDPA) initiative. This initiative targets incumbent and prospective professional youth workers working directly with young people. The funding available for these grants to register apprenticeship programs and apprentices is $900,000 and includes two categories of national organizations for application and award. There are two categories of national organizations: (1) National organizations and (2) National organizations awarded a national organization grant award in response to the Youth Development Practitioner Apprenticeship (YDPA) Implementation Grant SGA published in Vol. 66, No. 65/Wednesday, April 4, 2001.

DATES: Applications will be accepted commencing April 15, 2002. The closing date for receipt of applications is May 15, 2002, by 4:00 p.m. Eastern Daylight saving time. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications must be mailed or hand-delivered to: Mamie D. Williams, U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. Reference SGA/DFA 02–110.

Note: Your application should specify on the cover sheet whether you are applying for a category one or two grant.

Delivery of Applications

Hand Delivered Proposals. It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 p.m. (Eastern Daylight Saving Time), on the closing date at the specified address.

Telegraphed and/faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

Late Proposals. A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before the award is made and it:

• Was sent by U. S. Postal Service registered or certified mail not later than the fifth day (5th) calendar day before the closing date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th):

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the deadline date specified for receipt of proposals in the SGA. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of an application received after the deadline date for the receipt of proposals sent by the U.S. Postal Service. The term ''post marked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D. Williams at 202–693–2879. This is not a toll-free number. All inquiries should include the SGA/DFA number SGA/DFA 02–110, and a contact name, fax and phone numbers. This announcement will also be published on the Internet on the Employment and Training Administration's Home Page at *http://www.doleta.gov.* Award notifications will also be published on the Home Page.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 171 of the Workforce Investment Act authorizes the use for demonstration program funds appropriated under section 174(b) for the purpose of developing and implementing techniques and approaches, and demonstrating the effectiveness of specialized methods, in addressing employment and training needs. Section 171(d) of the Workforce Investment Act authorizes the use for dislocated worker demonstration programs of funds reserved under section 132(a)(2)(A) and establishes the administration of these funds by the Secretary for that purpose under section 173(b). DOL FY 2000 Appropriations Act, enacted November 17, 1999, authorizes dislocated worker demonstration projects that provide assistance to new entrants in the workforce and incumbent workers. Apprenticeship programs are authorized by The National Apprenticeship Act of 1937 Fitzgerald Act), Public Law 75–308 and clarified in Title 29, Code of Federal Regulations part 29.

II. Background

This section describes the context for this initiative aimed at developing and supporting apprenticeship programs for professional youth workers.

The enactment of the Workforce Investment Act (WIA) provides a unique opportunity to strongly impact the youth workforce development system. WIA moves away from short-term, largely summer employment opportunities to longer-term more comprehensive services to eligible youth. The focus is on assisting young people to acquire the skills and competencies that they need to successfully transition to adulthood, careers and further education and training. Youth development recognizes that young people need a range of supports and opportunities for learning and for growth over a long period of time. Services under a youth development approach include opportunities for leadership development, basic supportive services as well as academic and occupational skills training and work experiences.

Success in delivering the extensive services outlined by WIA depends not only on the quality of program design, but on the delivery of services to youth by front-line staff. Because youth services operate at the local level and are implemented by front-line youth workers, the role of youth workers is critical. Youth workers develop relationships with young people and provide crucial expertise and support to youth as they transition to adulthood and careers.

There is broad applicability for working with young people regardless of the funding source. Our vision over time is that this will be embraced throughout the field of youth work and will encourage more young adults to pursue youth work as a career. The long-term success of the youth workforce development system requires a human capital strategy. We are seeking to upgrade the field of youth work through accreditation, training opportunities, apprenticeship and certification.

III. The Youth Development Practitioner Apprenticeship Initiative

This initiative targets youth workers, those professionals who work or will work in youth programs delivering services to young people as front-line staff, to become apprentices in registered apprenticeship programs. The vision of occupation recognition and apprenticeship for youth workers is to provide quality training opportunities for youth workers who deliver comprehensive services to young people in order to maximize our investment in young people, in youth programming and in the workforce development system. There are two major goals for achieving occupation recognition and apprenticeship for Youth Development Practitioners. The first seeks to strengthen the field of youth work by providing training, mentoring and a career path for incumbent and prospective youth workers and, consequently, improve retention in the field. Secondly, this undertaking attempts to improve the quality of youth services by providing training standards; upgrading incumbent youth worker skills by increasing the number of youth workers who receive extensive, quality training; and increasing the stability of programs by helping to retain caring adult staff.

Registered apprenticeship provides a vehicle to meet the goals outlined above. It provides an effective time-honored way to build a skilled, knowledgeable and loyal workforce. The combination of structured OJT and related technical instruction will offer Youth Development Practitioners a recognizable career path that includes high quality training and educational opportunities, while offering the field recognizable occupational standards. It also provides for recognition through the issuance of a nationally recognized Certificate of Completion.

The Department of Labor awarded 13 Youth Development Practitioner Implementation Grants on June 30, 2001. Three categories of grants were awarded: (1) Funds for Local Intermediaries to Support Local Youth Program Service Operators in the Implementation of Apprenticeship Programs, (2) Grants to National Organizations, and (3) Provider of Technical Assistance on Practice and Curriculum Materials. The category three grantee, the Sar Levitan Center of Johns Hopkins University operates a website for this initiative. Information about YDPA initiative can be found on their website at *www.ydpaclearinghouse.org*

The Department of Labor will continue to disseminate information and publicize the Youth Development Practitioner occupation and apprenticeship. These funds are intended to stimulate, seed and support the broad implementation of these apprenticeship programs within national organizations that have affiliate youth programs which employ youth development practitioners.

IV. Grant Categories

National Organizations (Category 1 and Category 2)

We intend to support the development and registration of apprenticeship programs at the national and local level by supporting the broad implementation of the Youth Development Practitioner apprenticeship initiative by a national organization among its local affiliates. These grant awards seek to firmly establish apprenticeship within a national organization as a framework for staff development. National organizations are required to establish national guideline standards and register apprenticeship programs. Preference will be given to national organizations that demonstrate the ability to broadly implement the YDPA initiative within their organization and offer a strategic vision for maximizing impact within their organization. Examples of such a strategy may include: targeted implementation of affiliates within a state or region; coordination with other local or national organizations to implement the apprenticeship program in local communities and areas particularly as a way to develop and coordinate related instruction; and/or the development of an incentive program among affiliates. The national organization will develop a Youth Development Practitioner apprenticeship program for their local affiliates and will recruit affiliates to participate. The national organization will be responsible for developing a supportive system within their organization that coordinates and provides technical assistance to facilitate affiliate participation and provide ongoing support.

Thousands of local youth program service providers are affiliated with a national organization. This affiliation may take a number of forms. For example, a program may be a local chapter of a national organization that provides a range many types of community services, including youth programs.

Outcomes

Funded National Organizations (both category 1 and 2) are responsible for:

- Coordinating broad implementation of registered Youth Development Practitioner apprenticeship programs among affiliates or members
- Establishing an infrastructure within the national organization that provides ongoing support to participating programs, provides access to necessary training, coordinates outreach and recruitment, conducts evaluation, disseminates information including promotional materials, best practices and lessons learned, and monitors retention
- Certification of National Guideline Standards and registration of apprenticeship programs with participating apprentices before the end of the grant period
- Establishing a career path for apprentices including additional credentialing and necessary articulation agreements with post-secondary institutions
- Developing a mechanism for evaluation of activities undertaken that includes measurable results of impact
- Develop and operationalize a plan for sustainability to support this initiative after the grant has ended

Activities That May Be Supported Under This Grant Include:

- Development of a sustainable infrastructure and an oversight or advisory body to provide direction and guidance;
- Development of an outreach/communication plan to promote the apprenticeship and encourage broad affiliate participation;
- Development and dissemination of information materials on registered youth development practitioner programs;
- Identification of relevant curriculum for delivery of related instruction;
- Development of a recruitment and retention plan for participating apprentices and programs;
- Convening local youth program operators for the purpose of outreach, sharing of practice, technical assistance and training of journey level staff for delivery and assessment of on-the-job training;
- Adoption of or establishment of a train-the-trainer system that will ensure the availability of knowledgeable, experienced skilled instructors for delivery of on-the-job training and related instruction course work;
- Delivery of related instruction;
- Development of a process to promote career ladder for those graduates of the registered apprenticeship system (i.e. articulation into an Associates Degree or higher);
- Identification and dissemination of information on practice
- Defining, setting and documenting measurable goals or benchmarks for grant activities; and
- Documenting processes, lessons learned and effective practices.
- Development of an incentive system among affiliates.

V. Eligible Applicants

You are an eligible applicant for these grants if you are a not-for-profit organization, established under section 501(c)(3) of the Internal Revenue Code. To be an eligible applicant for Category 2, you must have been awarded a National Organization grant in response to YDPA Implementation Grant SGA published in Vol. 66, No. 65/Wednesday, April 4, 2001.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Note: Administrative Costs: Pursuant to 20 CFR 667.210(b), grantees are advised that there is a 10% limitation on administrative costs on funds administered under this grant. The Grant Officer may, however, approve additional administrative costs up to a maximum of 15% of the total award amount, if adequate justification is provided by the grantee at the time of the award. In no event, may administrative costs exceed 15% of the total award amount. The cost of administration shall include those disciplines enumerated in 20 CFR 6667.220(b) and (c).

Number and Amounts of Grants Awards

We expect to award up to eight (8) national organization grants. Category 1 national organizations may apply for grants in amounts ranging between $150,00–$200,000. Category 2 national organizations, current YDPA grantees, are eligible to apply for grants in amounts ranging between $50,000–$100,000.

Period of Performance

Grant awards will be made for a period of 18 months.

Application Submittal

Applicants must submit one (1) copy of their proposal with an original signature and two (2) copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains the Standard Form SF–424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet,'' Appendix B). The Catalog of Federal Assistance number is 17.260. All copies of the SF–424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The individual signing the SF–424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award. The budget must include, on a separate page, a detailed breakout of each line item.

Part II—Project Narrative—will be the technical proposal not to exceed 20 double-spaced single-sided, numbered pages, with a limit of 10 additional pages of support/commitment letters. The exception for format requirements applies to the Executive Summary. The Executive Summary must be limited to no more that two (2) single-sided pages. A font size of at least twelve (12) pitch is required throughout the application. Applicants that fail to meet the page limitation requirements will not be considered. You can include letters of support if they provide specific commitments. While applicants will not receive points simply because letters of support are enclosed, such letters may lead to a better score by showing that commitments presented in the text of your proposal are serious. Form letters will not be considered.

Review Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the established criteria listed below. The panel results are advisory in nature and are not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424, which constitutes a binding offer. All applications must include the required elements. Final award decisions will be based on the best interests of the government, including consideration of geographic area and variety amount types of organizations awarded grants.

Evaluation Criteria

Category 1: Grants to National Organizations

(1) Experience and capacity of the organization to reach, influence and support local youth program providers in development of registered apprenticeship programs. (35 points)

- Provide organization information: What is the mission of the organization? How many affiliate members does this organization have and where are they located?
- What is the relationship of the national organization to its affiliates or members? How does the organization communicate with its members? What are examples of technical assistance provided to local affiliates or members?
- What existing and new partnerships will be utilized to increase the capacity of the organization to implement apprenticeship programs?

(2) Soundness and quality of plan of activity. (40 points)

- Detail your strategy for implementing the YDPA in your organization (see section IV under National Organizations regarding preference for award). Include the number of affiliates projected to participate and your basis for identifying this number. List participating affiliates, if the list is incomplete, outline plan for securing additional participation. Commit or support letters from affiliates may be attached to support. (Preference will be given to national organizations that demonstrate high levels of participation among affiliates.)
- Delineate the specific activities proposed to support the development of registered apprenticeship programs and their time lines (be sure to address reasonableness of time lines presented).
- Outline strategies to mobilize interest among affiliates (beyond dissemination efforts) and replicate Youth Development Practitioner apprenticeship programs?
- Describe the infrastructure that will be developed to provide ongoing support to participating affiliates.
- Outline plan for the delivery of related instruction. Identify key partners (i.e. training providers, post-secondary institutions) who will be involved in this plan.
- Outline how your organization will create a career for additional credentialing. Outline your plan for engaging post-secondary institutions and support local affiliates to secure articulation agreements. If available, attach letters of support.
- Provide plan for evaluating the activities undertaken and how the impact of the program will be measured (include data to be collected).

(3) Commitment and plans for sustaining support after federal grant has ended. (25 points)

- Provide a chart that delineates specific resources [including monetary and other types of resources (staff, facilities, etc.)] that will contribute to the sustainability of this project as well as how these resources will be coordinated. Include the organization's resources and external partnership commitments. Identify additional partnerships that will be pursued.
- Explain how activities to promote and support registered apprenticeship will be incorporated into ongoing activities of the organization. Outline plan for sustaining infrastructure after funding has ended.
- Explain how promising practices of affiliates or members will be disseminated on an ongoing basis.

Category 2: Funds to Existing YDPA National Organization Grantees

Additional grant funds are being made available to original YDPA grantees in order to expand their implementation of the YDPA initiative by engaging additional affiliates and further solidifying the initiative within the national organization infrastructure.

(1) Demonstration of successful implementation of current grant. (35 points)

- Describe the capacity of your organization to expand the YDPA initiative. Include the mission/vision statement and description of the organization.
- Provide an outline of planned activities and the timeline of the current grant (include section 2 from the evaluation section of your original grant proposal as well as supplemental information developed since the grant's inception). If the timeline has not been achieved to date, provide an explanation and adjusted scheduled.
- Attach the quarterly reports submitted to the Department of Labor for Quarter 3 (qualitative report that includes quarters 1, 2 & 3).
- Outline challenges encountered during implementation of current YDPA implementation grant and the strategies to address these challenges (already employed, ongoing and/or planned).

(2) Expansion of current YDPA grant. (40 points)

• Detail how increased funds will broaden your implementation of YDPA. Outline a strategic plan to grow this initiative within your organization (see section IV under National Organizations). Include:

• The number of affiliates projected to participate and your basis for identifying this number. List participating affiliates, if the list is incomplete, outline plan for securing additional participation. Provide a plan for their integration into your organization's current YDPA activities. Commitment letters from affiliates may be attached to support. (Preference will be given to national organizations that demonstrate high levels of participation among affiliates.)

• Outline additional activities planned if additional funds are awarded.

• Detail how additional funds can further solidify the YDPA initiative within your organization.

• Provide a modified work plan/timeline of activities that integrates activities from current YDPA grant and additional activities proposed above.

(3) Commitment and plans for sustaining support after federal grant has ended. (25 Points)

• Provide a chart that delineates specific resources [including monetary and other types of resources (staff, facilities, etc.)] that will contribute to the sustainability of this project as well as how these resources will be coordinated. Include the organizations resources and external partnership commitments. Identify additional partnerships that will be pursued.

• Explain how activities to promote and support registered apprenticeship will be incorporated into ongoing activities of the organization. Outline plan for sustaining infrastructure after funding has ended.

• Explain how promising practices of affiliates or members will be disseminated on an ongoing basis.

The closing date for receipt of proposals is May 15, 2002. Your application should specify on the cover whether you are applying for a grant under Category 1 and Category 2 (Appendix C).

Signed in Washington, DC, this 10th day of April, 2002.

James W. Stockton,

Grants Officer.

Required Forms:

Appendix A
Application for Federal Assistance (Standard Form 424)
Appendix B
Budget Information Sheet
Detailed budget and budget information sheet
Appendix C
Cover Sheet

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

Appendix A

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

COVER SHEET

APPLICATION FOR FUNDING UNDER

SGA/DFA – 02 –110

YOUTH DEVELOPMENT PRACTITIONER

APPRENTICESHIP

IMPLEMENTATION GRANTS

Name of Applicant:_____

Contact Person: _____

Phone Number:_____

CATEGORIES: (MUST CHECK ONE)

_____ CATEGORY 1 – National Organizations

_____ CATEGORY 2 – Current YDPA Grantee

[FR Doc. 02–9088 Filed 4–12–02; 8:45 am]

BILLING CODE 4510–30–C

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Thursday, April 18, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Request from a Federal Credit Union to Expand its Community Charter.
3. Final Rule: Interpretative Ruling and Policy Statement (IRPS) 02–1, Chartering and Field of Membership Policy.
4. Request from a Corporate Credit Union for Federal Share Insurance.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, April 18, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action Under Section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).
2. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–9214 Filed 4–11–02; 2:17 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978 Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541; Code of Federal Regulations Title 45, part 670).

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Description of Permit and Modification: On March 12, 2001, the National Science Foundation issued a permit (ACA #2001–025) to Dr. Daniel P. Costa after posting a notice in the January 31, 2001 **Federal Register**. Public comments were not received. A request to modify the permit was posted in the **Federal Register** on March 5, 2002. No public comments were received. The modification, issued by the Foundation on April 8, 2002, allows the permit holder to enter several Antarctic Specially Protected Areas in the Antarctic Peninsula in order to capture and attached satellite relay data loggers (SRDL) on up to 25 crabeater seals. Access to the sites will only take place to locate seals hauled up on the shore, in situations where there are no seals available on the surrounding pack ice.

Location: Dion Islands (ASPA #107), Lagotellerie Island (ASPA #116), Avian Island (ASPA #117), and Rothera Point, Adelaide Island (ASPA #129).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 02–8995 Filed 4–10–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI]

In the Matter of Private Fuel Storage L.L.C. (Independent Spent Fuel Storage Installation)

CLI–02–11

Memorandum and Order

This order concerns two documents filed by the State of Utah on February 11, 2002, relating to the pending license application submitted by Private Fuel Storage, L.L.C. (PFS). Utah's ''Suggestion of Lack of Jurisdiction'' argues that the Nuclear Waste Policy Act of 1982, as amended (NWPA),[1] deprives the Commission of ''jurisdiction'' over PFS's application for a license to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians. In its ''Petition to Institute Rulemaking and to Stay Licensing Proceeding,'' Utah asks the Commission to amend its regulations in accordance with this theory, and to suspend related proceedings while the rulemaking is pending.

For the reasons set forth below, we deny the request for stay, set a schedule for interested parties to submit briefs on the substantive issue whether the NRC has authority under Federal law to issue a license for the proposed privately-owned, away-from-reactor spent fuel storage facility, and defer a decision on the rulemaking petition until we have had the opportunity to decide this threshold legal question.

I. Background

In 1980, the NRC promulgated its regulations allowing for licensing of ISFSIs, 10 CFR part 72, under its general authority under the Atomic Energy Act (AEA) to regulate the use and possession of special nuclear material.[2] This was two years before Congress enacted the NWPA.

In both its Petition for Rulemaking and ''Suggestion of Lack of Jurisdiction,'' Utah argues that the NWPA contemplates a comprehensive and exclusive solution to the problem of spent nuclear fuel and does not authorize private, away-from-reactor storage facilities such as the proposed PFS facility. Utah rests its argument on the following provision:

> Notwithstanding any other provision of law, nothing in this act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.[3]

Thus, says Utah, the NWPA cannot be said to ''authorize'' a private, away-from-reactor ISFSI like the proposed the PFS facility. Utah claims that because the NWPA established a comprehensive system for dealing with spent nuclear fuel, it is the only possible source for NRC's jurisdiction over spent fuel storage and overrides the Commission's general authority under the AEA to regulate the handling of spent fuel.

PFS opposes Utah's petitions, and argues that nothing in the NWPA expressly repeals the NRC's general, AEA-based licensing authority over spent fuel. PFS emphasizes that the NWPA provision on which Utah relies does not explicitly prohibit a private, away-from-reactor facility. The NRC Staff opposes Utah's petitions on procedural grounds.

II. Discussion

A. Request for Stay of Proceedings Pending Review

We find that Utah's request does not meet the four-part test for a stay of Board proceedings. In determining

[1] 42 U.S.C. § 10101 et. seq.

[2] See 45 FR 74,693 (Nov. 12, 1980).

[3] NWPA § 135(h).

whether to grant a stay of a licensing proceeding, the Commission looks at four factors: (1) Whether the petitioner has made a strong showing that it is likely to prevail upon the merits; (2) whether the petitioner faces irreparable injury if a stay is not granted; (3) whether the issuance of a stay would harm other interested parties; and (4) where the public interest lies.[4] The proponent of the stay has the burden of demonstrating that these factors are met.[5]

First, Utah does not make a strong showing of probable success on the merits. The NWPA on its face does not prohibit private, away-from-reactor spent fuel storage. The NWPA section on which Utah relies, if intended to prohibit such storage, certainly does not do so directly. It says only that ''nothing in this act * * * encourage[s], authorize[s], or require[s]'' the use of such facilities. It does not, in terms, prohibit storage of spent nuclear fuel at any privately-owned, away-from-reactor facility-which is Utah's position. We are willing to consider Utah's complex legislative history and statutory structure arguments, but we are not prepared to say that Utah's arguments are likely to prevail.

Second, we find no evidence that Utah faces ''irreparable injury'' if an immediate stay is not granted. Utah claims that it will suffer a loss of ''costs, expenses, and attorneys' fees'' resulting from its participation in the PFS licensing proceeding. [6] It is well-established in Commission case law, however, that we do not consider the incurrence of litigation expenses to constitute irreparable injury in the context of a stay decision.[7] Therefore, the State has failed to demonstrate that it would be irreparably harmed if a stay is not granted.

We also find that the third and fourth factors of the stay test are not met. Utah argues that PFS is not harmed, and will in fact benefit by saving litigation costs, if the Commission stays proceedings that will ultimately prove futile once we determine that we have no authority to issue this license. Although this reasoning is imaginative, PFS does not agree and opposes the stay. The proceedings, which have gone on for over four years, are at last nearing completion and further hearings are imminent. If the other parties are forced to reschedule expert and attorney time for some future date, it will cause them great inconvenience. The imminence of the hearings is also a factor in our determination that the public interest will be served if the parties are allowed to wrap up the matters they have been litigating for so long.

For the foregoing reasons, we deny Utah's request for a stay of these proceedings.

B. Commission Consideration of NWPA Issue on the Merits

Both the NRC staff and PFS argue that the Commission should not consider the NWPA issue at this time because the Suggestion of Lack of Jurisdiction is untimely. They maintain that the ''suggestion'' constitutes an untimely interlocutory appeal of a 1998 Atomic Safety and Licensing Board decision ruling on Contention Utah A.[8]

Utah first made its NWPA argument in 1997 in its Contention Utah A in the proceedings before the Licensing Board.[9] On April 22, 1998, the Board rejected the contention as an impermissible challenge to the Commission's regulations.[10] Utah's newly-filed ''suggestion'' could be viewed as merely a misnamed interlocutory appeal of the 1998 Board ruling, particularly because NRC's rules of practice have no provision for a pleading or motion called a ''Suggestion of Lack of Jurisdiction.'' A petition for interlocutory Commission review, if desired, should have come 15 days after the Board entered the ruling.[11] Otherwise, interlocutory rulings must wait for resolution until a final decision is entered.

Despite the reasonableness of the staff and applicant's timeliness argument, we find countervailing concerns that make immediate merits consideration appropriate. The issue presented here raises a fundamental issue going to the very heart of this proceeding. If in fact NRC has no authority to issue PFS a license, completion of the licensing process would be a waste of resources for all parties as well as the Commission. In addition, Utah has filed a petition for rulemaking, arguing that NRC's regulations must be amended in accordance with the state's legal theory. The underlying legal question, whether the law requires a rule change, must be resolved before NRC can accept or deny that petition.

We have decided that the legal issue is better resolved in an adjudicatory format—i.e., through legal briefs—than in a rulemaking format. We therefore take review in the exercise of our inherent supervisory authority over adjudications and rulemakings.[12]

The parties to this adjudication are intimately concerned and eminently well-informed about the legal question raised in Utah's petition. These litigation parties, as opposed to the general public, are likely to be the source of the most pertinent arguments and information. Public comment is likely to be less useful here, in a situation calling for pure legal analysis, than in the usual situation where the rulemaking proceeding raises scientific, policy or safety issues. We do consider, however, that persons outside this litigation should have an opportunity to weigh in on the NWPA issue and therefore invite any interested persons to submit amicus curiae briefs.

We conclude that the rulemaking process should be put on hold until the Commission rules on the threshold issue of whether the NWPA deprives it of authority to license a private, away-from-reactor spent fuel storage facility. If the legal issue is ultimately resolved in Utah's favor, then a formal revision clarifying Part 72 could be issued at that time.

III. Briefs

We already have before us extensive arguments by Utah (in its Suggestion and Rulemaking Petition) and PFS (in its Response to Utah's Suggestion of

[4] See Sequoyah Fuels Corp., (Gore, Oklahoma Site), CLI–94–9, 40 NRC 1, 6 (1994); Allied-General Nuclear Services (Barnwell Nuclear Fule Plant Separations Facility), ALAB–296, 2 NRC 671, 677–78 (1975); CF. Private Fuel Storage, L.L.C, (Independent Spent Fuel Storage Installation), CLI–02–08, 55 NRC __, slip op. at 3 n. 7 (2002). This is the same test set forth in our regulations for determining whether to grant a stay of the effectiveness of a presiding officer's decision. 10 CFR § 2.788(e).

[5] See Hydro Resources Inc., CLI–98–08, 47 NRC 314, 323 (1998); Alabama Power Co. (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), CLI–81–27, 14 NRC 795, 797 (1981).

[6] Rulemaking Petition at 37–38.

[7] See Sequoyah Fuels Corporation and General Atomics, CLI–94–9, 40 NRC at 6. See also Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI–84–17, 20 NRC 801, 804 (1984).

[8] See ''NRC Staff's Response to the State of Utah's (1) Request to Stay Proceeding, and (2) Suggestion of Lack of Jurisdiction,'' (Feb. 26, 2002), at 7–8; ''Applicant's Response to Utah's Suggestion of Lack of Jurisdiction'' (Feb. 21, 2002), at 4–7.

[9] See ''State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage L.L.C. for an Independent Spent Fuel Storage Facility,'' (Nov. 23, 1997). (''Congress has not authorized the NRC to issue a license to a private entity for a 4,000 cask, away-from-reactor, centralized, spent nuclear fuel storage facility.'')

[10] Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP–98–7, 47 NRC 142, 183 (1998).

[11] See 10 C.F.R. § 2.786(b).

[12] *See*, e.g., North Atlantic Energy Service Corporation (Seabrook Station, Unit 1), CLI–98–18, 48 NRC 129 (1998); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI–98–15, 48 NRC 45, 52–53 (1998); Cf. Kansas Gas and Elec. Co., (Wolf Creek Generating Station, Unit 1), CLI–99–05, 49 NRC 199 (1999).

Lack of Jurisdiction and attachments). We will consider the legal arguments set forth in those documents.

If these parties wish to supplement the arguments made therein, they may submit further briefs to the Commission by May 15. In addition, interested persons are invited to submit amicus curiae briefs by May 15. Briefs should be no longer than 30 pages and should be submitted electronically (or by other means to ensure that receipt by the Secretary of Commission by the due date), with paper copies to follow. Briefs in excess of 10 pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited. Page limitations are exclusive of pages containing a table of contents, table of cases, and any addendum containing statutes, rules, regulations, and like material.

IV. Conclusion

For the foregoing reasons, the request for a stay of proceedings is denied, the petition for rulemaking is deferred, Commission review of the NWPA issue is granted, and the adjudicatory parties and any interested amicus curiae are authorized to file briefs as set out above.

It is so ordered.

Dated at Rockville, MD this 3rd day of April, 2002.

For the Commission.[13]

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–9081 Filed 4–12–02; 8:45 am]

BILLING CODE 7590–01–P

[13] Commissioner Diaz was not present for the affirmation of this Order. If he had been present, he would have approved it.

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2001 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of agency Inventory of Activities That Are Not Inherently Governmental.

SUMMARY: The Department of Defense inventory of activities that are not Inherently Governmental is now available to the public, in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act''). This is the fourth and final release of the 2001 FAIR Act inventories. The Office of Federal Procurement Policy has also made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html.* This User's Guide will help interested parties review 2001 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The FAIR Act requires that OMB publish an announcement of public availability of agency Inventories of Activities that are not Inherently Governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has now completed this process for the year 2001.

Those interested in reviewing the Department of Defense year 2001 FAIR Act inventory may contact the Department's FAIR Act hotline at (703) 824–2692 or may access the inventory through the website address at: *http://web.lmi.org/fairnet/.*

The Department of Defense mail service, post September 11, 2001, has experienced significant delays due to new security requirements. Therefore, interested parties are encouraged to use the FAX to submit challenges and appeals regarding the content of the inventory, as provided for by the FAIR Act. The FAX number for each Departmental component (Army, Navy, Air Force, Marines, etc) is provided on the above website.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–8992 Filed 4–12–02; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Included in this notice are required interest rates for determining the variable-rate premium for premium payment years beginning in January through April 2002. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rates for determining the variable-rate premium under part 4006 apply to premium payment years beginning in January through April 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is described as the ''applicable percentage'' of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year'').

The Treasury Department has suspended issuance of 30-year Treasury securities and, effective February 18, 2002, ceased supplying the Federal Reserve Board with an estimate of the annual yield on 30-year Treasury securities, which until then had been published in Federal Reserve Statistical Release H.15. However, the Internal Revenue Service in Notice 2002–26

(scheduled for publication in Internal Revenue Bulletin 2002–15) announced that it had determined the rate of interest on 30-year Treasury securities for February 2002 and that it would determine and publish the rate of interest on 30-year Treasury securities for succeeding months pending enactment of legislative changes that address the discontinuance of 30-year Treasury securities. The PBGC has concluded that it is appropriate to use the February rate announced in Notice 2002–26, and future rates determined in the manner described in that notice, in setting the required interest rate for purposes of calculating the variable-rate premium.

Until March 9, 2002, the applicable percentage of the 30-year Treasury rate (to be used in determining the required interest rate) under section 4006(a)(3)(E)(iii)(II) of ERISA had been 85 percent. However, the Job Creation and Worker Assistance Act of 2002 (Public Law No. 107–147), signed into law on that date, changes the applicable percentage to 100 percent for plan years beginning after December 31, 2001, and before January 1, 2004.

Accordingly, the required interest rates to be used in determining variable-rate premiums for premium payment years beginning in January through April 2002 are 5.48 percent for January, 5.45 percent for February, 5.40 percent for March, and 5.71 percent for April (*i.e.*, 100 percent of the 30-year Treasury rate figures for December 2001 through March 2002).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 2001 and April 2002.

For premium payment years beginning in	The required interest rate is
May 2001	4.80
June 2001	4.91
July 2001	4.82
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of 2002, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rates (percent)
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	6/30/02	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the second quarter (April through June) of 2002 (*i.e.*, the rate reported for March 15, 2002) is 4.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	6/30/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of April 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–9065 Filed 4–12–02; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: OPM 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. OPM 2809, Health Benefits Registration Form, is used by annuitants and former spouses to elect, cancel, or change health benefits enrollment during periods other than open season.

There are approximately 30,000 changes to health benefits coverage per year. Of these, 20,000 are submitted on

form OPM 2809 and 10,000 verbally or in written correspondence. Each form takes approximately 45 minutes to complete; data collection by telephone or mail takes approximately 10 minutes. The annual burden for the form is 15,000 hours; the burden not using the form is 1,667 hours. The total burden is 16,667.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Desktop Publishing & Printing Team, Budget & Administrative Services Division, (202) 606–0623

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–9009 Filed 4–12–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Kinam Gold Inc., $3.75 Series B Convertible Preferred Stock, par value $1.00 per share) File No. 1–9620

April 8, 2002.

Kinam Gold, Inc., a Nevada corporation, (''Issuer'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(c) thereunder,[2] to strike the $3.75 Series B Convertible Preferred Stock, par value, $1.00 per share (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on April 1, 2002 to withdraw its Securities from listing on the Exchange. The Board cites the following reasons for its decision to withdraw its Security: (i) As the result of a tender offer made on February 20, 2002, by Kinross Gold Corporation (''Kinross''), which indirectly through a wholly-owned subsidiary, owned all of the issued and outstanding common stock of the Issuer and approximately 51.4% of the Security, Kinross now owns 100% of the common stock of the Issuer and 86.9% of the Security; (ii) as a result of Kinross's current ownership position, the Issuer controls approximately 99.6% of the vote with respect to all matters submitted jointly to the shareholders of the common stock and Security. In addition, Kinross controls the vote on all matters requiring approval of the Security voting separately as a single class; (iii) in the tender offer materials Kinross provided to its shareholders, Kinross indicated its intent to the Issuer to engage in a merger, recapitalization, or other transactions subsequent to the tender offer in which any remaining shareholders of the Security would be entitled to receive cash for their shares and, consequently, Kinross would be the sole remaining holder of the Security; and (iv) as of January 22, 2002, prior to the commencement of the tender offer, there were only 49 registered holders of the Issuer's Security. The number of registered holders was reduced to 32 as a result of the tender offer.

The Issuer states in its application that it has met the requirements of the Amex Rule 18 by complying with all applicable laws in effect in the state of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Securities from the Amex and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 30, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–8996 Filed 4–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25515; File No. 812–12582]

Sage Life Assurance of America, Inc., et al.; Notice of Application

April 9, 2002.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'') granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) and Rule 22c–1 thereunder to permit the recapture of Investment Credits applied to purchase payments made under certain deferred variable annuity contracts and certificates.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of Investment Credits applied to purchase payments made under deferred variable annuity contracts and certificates (the ''Contracts'') that Sage Life will issue through Variable Account A, as well as other contracts that Sage Life may issue in the future through Future Accounts that are substantially similar in all material respects to the Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Sage Life, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(c).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Variable Account A or any Future Account (''Sage Life Broker-Dealer(s)'').

Applicants: Sage Life Assurance of America, Inc. (''Sage Life''), The Sage Variable Annuity Account A (''Variable Account A'' or ''Variable Account''), and Sage Distributors, Inc. (''SDI'') (collectively, ''applicants'').

Filing Date: The application was filed on July 24, 2001, and Amendment No. 1 to the application was filed on March 25, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 30, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o James F. Bronsdon, Sage Life Assurance of America, Inc., 300 Atlantic Street, Suite 302, Stamford, CT 06901.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Sage Life is a stock life insurance company organized under the laws of Delaware. Variable Account A was established on December 3, 1997. Sage Life serves as depositor of Variable Account A. Sage Life may in the future establish one or more Future Accounts for which it will serve as depositor.

2. Variable Account A is a segregated asset account of Sage Life. The Variable Account is registered with the Commission as a unit investment trust investment company under the Act. Variable Account A filed a Form N–8A Notification of Registration under the 1940 Act on December 24, 1997. The Variable Account will fund the variable benefits available under the Contracts funded through it. Units of interest in Variable Account A under the Contracts they fund will be registered under the Securities Act of 1933 (the ''1933 Act''). In that regard, Variable Account A filed a Form N–4 Registration Statement on June 12, 2001 under the 1933 Act relating to the Contracts. Sage Life may in the future issue Future Contracts through Variable Account A or through Future Accounts. That portion of the assets of Variable Account A that is equal to the reserves and other Contract liabilities with respect to Variable Account A is not chargeable with liabilities arising out of any other business of Sage Life. Any income, gains or losses, realized or unrealized, from assets allocated to Variable Account A is, in accordance with Variable Account A's Contracts, credited to or charged against Variable Account A, without regard to other income, gains or losses of Sage Life.

3. SDI is a wholly-owned subsidiary of Sage Insurance Group Inc. and an affiliate of Sage Life, and will be the principal underwriter of Variable Account A and distributor of the Contracts funded through Variable Account A (the ''Variable Account A Contracts''). SDI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Variable Account A Contracts will be offered through unaffiliated broker-dealers who have entered into agreements with SDI. SDI, or any successor entity, may act as principal underwriter for any Future Accounts and distributor for any Future Contracts issued by Sage Life in the future. A successor entity also may act as principal underwriter for Variable Account A.

4. The Contracts are a part of Sage Life's line of annuity products. The Contracts are group and individual deferred variable and fixed annuity contracts and certificates. The Contracts may be issued under an individual retirement annuity or as a non-qualified contract. The Contracts are designed to provide for the accumulation of assets and for income through investment during an accumulation phase. Purchase payments may be made at any time during the accumulation phase. The minimum initial purchase payment is $5,000 for non-qualified contracts and $2,000 for qualified contracts. Additional premiums of at least $250 can be made.

5. The Contracts permit purchase payments to be allocated to guarantee periods of the Fixed Account of Sage Life (''Fixed Sub-Accounts'').

6. Variable Account A is divided into various available sub-accounts, each of which will be available under the Variable Account A Contracts. The sub-accounts are referred to as ''Variable Sub-Accounts.'' Each Variable Sub-Account will invest in a portfolio of certain underlying mutual funds (''Funds''). The Variable Sub-Accounts and the Fixed Sub-Accounts will comprise the initial Investment Options under the Contracts. The Funds are open-end management investment companies registered under the 1940 Act, whose shares are registered under the 1933 Act.

7. Sage Life, at a later date, may determine to create additional Variable Sub-Accounts of Variable Account A to invest in any additional portfolios or other investments as may now or in the future be available. Similarly, Variable Sub-Account(s) of Variable Account A may be combined or eliminated from time to time.

8. The Contracts provide for transfer privileges among Sub-Accounts, dollar cost averaging, rebalancing, and other features. The following charges are assessed under the Contracts:

(i) Annual asset-based charges of 1.60% for Contract years 1–7 and 1.40% for Contract years 8 and thereafter;

(ii) A surrender charge which starts at 8.5% in the first year, and declines to 0% in the 8th Contract year with a 10% Free Withdrawal Amount. The Surrender Charge (as a percentage of purchase payments withdrawn or surrendered) is as follows:

Applicable contract year	Applicable surrender charge percentage (percent)
1	8.5
2	8.5
3	5.5
4	5
5	4
6	3
7	1
8 and thereafter	0

With regard to the free withdrawal, a Contract owner may withdraw a portion of the account value without incurring a surrender charge equal to the greater of: (a) 10% of total purchase payments less all prior withdrawals (including any associated surrender charge and market value adjustment incurred) in that Contract year, or (b) cumulative earnings (*i.e.,* the excess of the account value on the date of withdrawal over

purchase payments received, less prior withdrawals taken subject to surrender charges). Any amount in (a) not used in a Contract year may be carried forward to the next Contract year subject to a maximum of 30% of the total purchase payments over 100% of all prior withdrawals (including any associated surrender charge and market value adjustment incurred in that Contract year). Because the Free Withdrawal Amount is not considered a liquidation of purchase payments, if an Owner surrenders the Contract during the same Contract year in which the Owner has taken advantage of the full Free Withdrawal Amount, the Owner will pay the same surrender charges as if the Owner did not take advantage of the full Free Withdrawal Amount;

(iii) a $40 annual administration charge in Contract years 1–7 for Contracts having Account Value of less than $50,000 on the charge deduction date ($0 thereafter);

(iv) a maximum transfer charge of $25 for each transfer in excess of 12 in a Contract year (which is currently waived);

(v) if optional benefit riders are selected, the following charges are assessed (as a percentage of Account Value): 0.20% for the Guaranteed Minimum Income Benefit; 0.35% for the Enhanced Guaranteed Minimum Income Benefit; 0.05% for the Accidental Death Benefit; 0.25% for the Earnings Enhancement Death Benefit; 0.05% for the Enhanced Guaranteed Minimum Death Benefit; and 0.55% for the Guaranteed Minimum Account Value Benefit. Sage Life currently assesses a charge for the Earnings Enhancement Life Insurance benefit outside of the Contract which is equal, on an annual basis, to 0.25% of Account Value. The Funds also impose management and administrative fees which vary depending upon which Portfolio(s) are selected.

When withdrawals are made from the Contract, the amounts withdrawn, for the purpose of determining surrender charges, will be taken in the following order: first earnings, then the Free Withdrawal Amount, then purchase payments subject to the surrender charge.

9. Sage Life will add an Investment Credit to the Account Value for cumulative purchase payments made during Contract year one. The maximum Investment Credits are:

Cumulative purchase payments during contract year 1	Investment credit percentage (as a percentage of purchase payments)
Less than $50,000	3.0
More than $49,999.99 but less than $500,000	4.0
More than $499,999.99	5.0

The crediting of the Investment Credit for any purchase payments made during Contract Year one will be made at the same time purchase payments are allocated to the Fixed and Variable Sub-Accounts.

If additional purchase payments are made during Contract year one that increase the cumulative purchase payments to a higher breakpoint, Sage Life will credit an additional Investment Credit to the Account Value. For each previous purchase payment made during Contract year one, Sage Life calculates this amount by subtracting (b) from (a), and then multiplying by (c), where: (a) Is the Investment Credit percentage based upon cumulative purchase payments to date, but not beyond Contract year one; (b) is the sum of the Investment Credit percentages previously credited to a purchase payment made during Contract year one; and (c) is the corresponding purchase payment made during Contract year one.

Each Investment Credit will be allocated to the same Sub-Accounts and in the same proportion as the purchase payment just made. The Investment Credit is not considered to be a purchase payment. Investment Credits will be paid from Sage Life's general account assets. Surrender charges will not be assessed on the Investment Credit. Investment Credits are also not considered to be an investment in the Contract (basis) for tax purposes.

10. Sage Life will recapture some or all of the Investment Credits, but not the earnings relating to the Investment Credits, in the following circumstances:

(i) Sage Life will recapture any Investment Credits credited to the Account Value if the Contract owner cancels the Contract during the Free-Look Period.

(ii) Sage Life will recapture any Investment Credits credited to the Account Value in the 24 months before the income date.

(iii) If the Contract owner withdraws all or a portion of a purchase payment (for which an Investment Credit was added to the Contract) before the seventh Contract anniversary and it is subject to a surrender charge, Sage Life will recapture a proportionate amount of the Investment Credit related to that purchase payment. (Proportionate means the amount of the withdrawal subject to a surrender charge as a percentage of the amount of the unliquidated purchase payment.) For example, assume an initial purchase payment of $100,000. An Investment Credit is added and, therefore, the account value equals $104,000. Assume that sometime during the fourth Contract year, the return (net of charges) is 50%, for an account value of $156,000. Assume that the Contract owner withdraws $100,000. (No other withdrawals were made, and assume that a market value adjustment does not apply.) The $100,000 withdrawal would be determined as follows: $56,000 is earnings, and will be subject neither to the surrender charge nor to recapture; $44,000 is considered to be a liquidation of a portion of the purchase payment. In year four, the surrender charge percentage is 5%, which, applied to the $44,000, results in a charge of $2,200. In addition, $1,760 of the Investment Credit is recaptured ($4,000 x $44,000/100,000). Therefore, the amount of the withdrawal paid is $100,000 as requested. The account value will be reduced by the amount of the withdrawal paid ($100,000), by the surrender charge ($2,200) and by the recapture of a proportionate amount of the Investment Credit ($1,760) for a total reduction in account value of $103,960.

(iv) If a Contract owner withdraws all or a portion of a purchase payment for which Sage Life credited an Investment Credit before the seventh Contract anniversary and an otherwise applicable surrender charge is waived pursuant to the Waiver of Surrender Charge Rider, Sage Life will recapture the Investment Credit related to the purchase payment. The Waiver of Surrender Charge Rider provides that Sage Life will not deduct a surrender charge if, at the time it receives a request for a withdrawal or a surrender, it has also received due proof that the Contract Owner (or the annuitant, if the Owner is not an individual) has a ''Qualifying Terminal Illness'' or meets the rider's prerequisites concerning confinement to a ''Qualifying Hospital or Nursing Care Facility.''

11. Applicants seek exemption pursuant to section 6(c) from sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Sage Life to recapture Investment Credits applied to the Contract and Future Contracts as described above.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by Variable Account A or Future Accounts, that are issued by Sage Life and underwritten or distributed by SDI or Sage Life Broker-Dealers. Applicants state that Future Contracts funded by Variable Account A or any Future Accounts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track the Investment Credit amount in the Variable Account after the Investment Credit is applied. Accordingly, the asset-based charges applicable to the Variable Account will be assessed against the entire amounts held in the Variable Account, including the Investment Credit. As a result, the aggregate asset-based charges assessed against an Owner's Account Value will be higher than those that would be charged if the Owner's Account Value did not include the Investment Credit.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Investment Credit recapture provisions of the Contract would not deprive an Owner of his or her proportionate share of the issuer's current net assets. Applicants state that an Owner's interest in the amount of the Investment Credit allocated to his or her Account Value upon receipt of first year purchase payments is not fully vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an Owner's interest in the amount of any Investment Credit is not completely vested for seven complete years following the Contract date (date the Contract was issued) with respect to withdrawals and 24 months with respect to annuitization. Until or unless the amount of any Investment Credit is vested, Applicants submit that Sage Life retains the right and interest in the Investment Credit amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when Sage Life recaptures any Investment Credit it is simply retrieving its own assets, and because an Owner's interest in the Investment Credit is not vested, the Owner has not been deprived of a proportionate share of the Variable Account's assets, *i.e.,* a share of the applicable Variable Account's assets proportionate to the Owner's Account Value.

5. In addition, with respect to Investment Credit recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Investment Credit amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Sage Life could not recapture the Investment Credit, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of Investment Credits upon certain withdrawals or the receipt of income payments is designed to provide Sage Life with a measure of protection. Again, the amounts recaptured were provided by Sage Life from its own general account assets as an Investment Credit, and any gain would remain as part of the Account Value.

7. Applicants represent that the Investment Credit will be attractive to and in the interest of investors because it will permit Owners to put between 103% to 105% of their first year purchase payments to work for them in the selected Sub-Accounts. Also, any earnings attributable to the Investment Credit will be retained by the Owner, and the principal amount of the Investment Credit will be retained if the contingencies set forth in the application are satisfied.

8. Applicants state that Sage Life's right to recapture Investment Credits applied within seven Contract years of certain withdrawals or the receipt of income payments within 24 months of the credit being applied protects it against the risk that Owners will contribute large amounts as they approach certain events to obtain the Investment Credit, while avoiding Contract charges over the long term. With respect to refunds paid upon the return of Contracts within the ''Free-Look'' period, the amount payable by Sage Life must be reduced by the allocated Investment Credit. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the Free-Look provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Investment Credit under the Contracts do not, and any such Future Contract provisions will not, violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Investment Credit under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current

net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. Arguably, Sage Life's recapture of the Investment Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of Variable Account A. Applicants contend, however, that recapture of the Investment Credit is not violative of Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. To effect a recapture of a Investment Credit, Sage Life will redeem interests in an Owner's account value at a price determined on the basis of current net asset value of Variable Account A. The amount recaptured will equal the amount of the Investment Credit that Sage Life paid out if its general account assets. Although Owners will be entitled to retain any investment gain attributable to the Investment Credit, the amount of such gain will be determined on the basis of the current net asset value of Variable Account A. Thus, no dilution will occur upon the recapture of the Investment Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Investment Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Investment Credit under the Contracts and Future Contracts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9056 Filed 4–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25518; File No. 812–12776]

American Enterprise Life Insurance Company, et al.; Notice of Application

April 10, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities.

APPLICANTS: The American Enterprise Life Insurance Company (''American Enterprise''), Kemper Investors Life Insurance Company (''KILICO''), MetLife Investors Insurance Company (''MetLife''), MetLife Investors Insurance Company of California (''MetLife California''), First MetLife Investors Insurance Company (''First MetLife''), Sun Life Assurance Company of Canada (U.S.) (''Sun Life Canada''), and Sun Life Insurance and Annuity Company of New York (''Sun Life New York'') (collectively, ''Insurance Company Applicants''), American Enterprise Variable Annuity Account (''AE Annuity Account''), American Enterprise Variable Life Account (''AE Life Account''), KILICO Variable Separate Account-2 (''KILICO Account 2''), KILICO Variable Series II Separate Account (''KILICO Account II''), KILICO Variable Series III Separate Account (''KILICO Account III''), KILICO Variable Series VI Separate Account (''KILICO Account VI''), MetLife Investors Variable Annuity Account One (''ML Annuity Account One''), MetLife Investors Variable Annuity Account Five (''ML Annuity Account Five''), MetLife Investors Variable Life Account One (''ML Life Account One''), MetLife Investors Variable Annuity Account Five (''ML Life Account Five''), First MetLife Investors Variable Annuity Account One (''First ML Annuity Account One''), Sun Life of Canada (U.S.) Variable Account F (''SL Account F''), Sun Life of Canada (U.S.) Variable Account G (''SL Account G''), Sun Life of Canada (U.S.) Variable Account I (''SL Account I''), and Sun Life (N.Y.) Variable Account C (''SL Account C'').

FILING DATE: The application was filed on February 5, 2002, and amended and restated on April 9, 2002. Applicants represent that they will file an amendment to the application during the notice period to conform to the representations set forth herein.

SUMMARY OF APPLICATION: Applicants request an order to permit the substitutions by American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, or Sun Life New York of shares of one or more investment portfolios (each, a ''Portfolio'' or a ''Fund'') held by one or more of AE Annuity Account, AE Life Account, KILICO Account 2, KILICO Account II, KILICO Account III, KILICO Account VI, ML Annuity Account One, ML Annuity Account Five, ML Life Account One, ML Life Account Five, First ML Annuity Account One, SL Account F, SL Account G, SL Account I, or SL Account C (each an ''Account,'' together, the ''Accounts'') to support variable annuity or variable life insurance contracts issued by the Insurance Company Applicants (the ''Contracts'') as follows: (1) Shares of GSVIT CORE U.S. Equity Fund for shares of GSVIT Internet Tollkeeper Fund, (2) shares of Templeton Global Income Securities Fund for shares of GSVIT Global Income Fund, (3) shares of SVS Growth Portfolio for shares of GSVIT CORE Large Cap Growth Fund, (4) shares of MFSVIT Global Governments Series for shares of GSVIT Global Income Fund, (5) shares of AIMVIF Capital Appreciation Fund for shares of GSVIT Internet Tollkeeper

Fund, (6) shares of SVS Government Securities Portfolio for shares of GSVIT Global Income Fund, (7) shares of AIMVIF Growth Fund for shares of GSVIT Internet Tollkeeper Fund, and (8) shares of AIMVIF Growth Fund for shares of GSVIT CORE Large Cap Growth Fund.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 30, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o James M. Odland, Esq., American Enterprise Life Insurance Company, 50607 AXP Financial Center, Minneapolis, Minnesota 55474; Maura A. Murphy, Esq., Senior Counsel, Sun Life Assurance Company of Canada (U.S.), One Sun Life Executive Park SC: 1335, Wellesley Hills, Massachusetts 22481; Richard Pearson, Esq., Executive Vice President, MetLife Investors Insurance Company, 22 Corporate Plaza Drive, Newport Beach, California 92660; Juanita M. Thomas, Esq., Vice President & Assistant General Counsel, Kemper Investors Life Insurance Company, 1600 McConner Parkway, Schaumburg, Illinois 60196. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Zandra Bailes, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. American Enterprise is a stock life insurance company organized under the laws of Indiana in 1981. It conducts a conventional life insurance business and is licensed to conduct life insurance business in all states other than New Hampshire and New York, and in the District of Columbia. American Enterprise is an indirect wholly-owned subsidiary of American Express Financial Corporation which is a wholly-owned subsidiary of American Express Company. As of December 31, 2001, American Enterprise had assets of approximately $4.9 billion. American Enterprise is the depositor and sponsor of the AE Annuity Account and AE Life Account.

2. KILICO is a stock life insurance company organized under the laws of Illinois in 1947. KILICO offers life insurance and annuity contracts and is licensed to do business in the District of Columbia and all states of the United States except New York. KILICO is a wholly-owned subsidiary of Kemper Corporation, a non-operating holding company subsidiary of Zurich Group Holding, a Swiss holding company. Zurich Group Holding is wholly-owned by Zurich Financial Services, another Swiss holding company. As of December 31, 2001, KILICO had assets of approximately $18 billion. KILICO is the depositor and sponsor of KILICO Account 2, KILICO Account II, KILICO Account III, and KILICO Account VI.

3. MetLife is a stock life insurance company organized in Missouri in 1981 as Assurance Life Company. It changed its name to Xerox Financial Services Life Insurance Company in 1985 and to Cova Financial Services Life Insurance Company in 1995 when it was acquired by General American Life Insurance Company. Metropolitan Life Insurance Company indirectly acquired it in January 2000 and changed its name to MetLife Investors Insurance Company in February 2002. Metropolitan Life Insurance Company, headquartered in New York City since 1868, is a leading provider of insurance and financial products and services to individuals and groups. MetLife is licensed to conduct business in the District of Columbia and all states except California, Maine, New Hampshire, New York and Vermont. As of December 31, 2001, MetLife had assets of approximately $5.3 billion. MetLife is the depositor and sponsor of ML Annuity Account One and ML Life Account One.

4. MetLife California is a stock life insurance company organized in California in 1972 as Industrial Indemnity Life Company. It changed its name to Xerox Financial Life Insurance Company in 1986 and to Cova Financial Life Insurance Company in 1995 when it was acquired by General American Life Insurance Company. Metropolitan Life Insurance Company indirectly acquired it in January 2000 and changed its name to MetLife Investors Insurance Company of California in February 2002. Metropolitan Life Insurance Company, headquartered in New York City since 1868, is a leading provider of insurance and financial products and services to individuals and groups. MetLife California is licensed to do business only in the state of California. As of December 31, 2001, MetLife California had assets of approximately $400 million. MetLife California is the depositor and sponsor of ML Annuity Account Five and ML Life Account Five.

5. First MetLife is a stock life insurance company organized in New York in 1992 as First Xerox Life Insurance Company. It changed its name to First COVA Life Insurance Company in 1995 when it was acquired by General American Life Insurance Company. Metropolitan Life Insurance Company indirectly acquired it in January 2000 and changed its name to First MetLife Investors Insurance Company in February 2002. Metropolitan Life Insurance Company, headquartered in New York City since 1868, is a leading provider of insurance and financial products and services to individuals and groups. First MetLife is licensed to do business only in the state of New York. As of December 31, 2001, First MetLife had assets of approximately $300 million. First MetLife is the depositor and sponsor of First ML Annuity Account One.

6. Sun Life Canada is a stock life insurance company organized under the laws of Delaware on January 12, 1970. Sun Life Canada is principally engaged in the business of offering insurance policies and annuity contracts. It is licensed in all states of the United States except New York and in the District of Columbia and Puerto Rico. Sun Life Canada is an indirect wholly-owned subsidiary of Sun Life Assurance Company of Canada, a Canadian insurance company, which is a wholly-owned subsidiary of Sun Life Financial Services of Canada, Inc., a Canadian insurance holding company. As of December 31, 2001, Sun Life Canada had assets of approximately $22 billion. Sun Life Canada is the depositor and sponsor of SL Account F, SL Account G, and SL Account I.

7. Sun Life New York is a stock life insurance company organized under the

laws of New York in 1983. It is engaged in the business of offering life insurance policies and annuity contracts in New York. Sun Life New York is a wholly-owned subsidiary of Sun Life Canada. As of December 31, 2001, Sun Life New York had assets of approximately $620 million. Sun Life New York is the depositor and sponsor of SL Account C.

8. Under the insurance law of its depositor's domicile, the assets of each respective Account attributable to the Contracts are owned by its depositor, but are held separately from the other assets of the depositor for the benefit of the owners of, and the persons entitled to payment under, those Contracts. If, and to the extent so provided under the applicable Contracts, that portion of the assets of any Account equal to the reserves and other contract liabilities with respect to that Account are not chargeable with liabilities arising out of any other business its depositor may conduct. Income, gains and losses, realized or unrealized, from the assets of each Account are credited to or charged against that Account without regard to the other income, gains, or losses of the Account's depositor. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the Act. Each Account, other than KILICO Account II, KILICO Account III and KILICO Account VI, is registered with the Commission as a unit investment trust. Each Account is comprised of a number of subaccounts and each subaccount invests exclusively in a Portfolio or Fund.

9. AE Annuity Account is divided into 562 subaccounts. The assets of AE Annuity Account support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the Securities Act of 1933, as amended, (the ''1933 Act'') on Form N–4.

10. AE Life Account is divided into 42 subaccounts. The assets of AE Life Account support variable life insurance contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form S–6.

11. KILICO Account 2 is divided into 17 subaccounts. The assets of KILICO Account 2 support variable life insurance contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form S–6.

12. KILICO Account II is divided into 33 subaccounts; KILICO Account III into 40 subaccounts; and KILICO Account VI into 38 subaccounts. The assets of each of KILICO Account II, KILICO Account III and KILICO Account VI support variable life insurance contracts, and interests in the Accounts offered through such Contracts have not been registered under the 1933 Act in reliance on the exemption therefrom in Section 4(2) thereof. KILICO Account II is not registered as an investment company under the Act in reliance upon the exclusion from the definition of an investment company in Section 3(c)(7) of the Act. KILICO Account III and KILICO Account VI are not registered as an investment companies under the Act in reliance upon the exclusion from the definition of an investment company in Section 3(c)(1) of the Act.

13. ML Annuity Account One is divided into 128 subaccounts. The assets of ML Annuity Account One support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form N–4.

14. ML Annuity Account Five is divided into 125 subaccounts. The assets of ML Annuity Account Five support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form N–4.

15. ML Life Account One is divided into 51 subaccounts. The assets of ML Life Account One support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form S–6.

16. ML Life Account Five is divided into 51 subaccounts. The assets of ML Life Account Five support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form S–6.

17. First ML Annuity Account One is divided into 101 subaccounts. The assets of First ML Annuity Account One support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form N–4.

18. SL Account F is divided into 144 subaccounts. The assets of SL Account F support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form N–4.

19. SL Account G is divided into 82 subaccounts. The assets of SL Account G support variable life insurance contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form S–6.

20. SL Account I is divided into 49 subaccounts. The assets of SL Account I support variable life insurance contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form S–6.

21. SL Account C is divided into 125 subaccounts. The assets of SL Account C support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the 1933 Act on Form N–4.

22. Each management investment company is registered as an open-end management investment company under the Act. Further, each is a series investment company as defined by Rule 18f-2 under the Act and issues separate series of shares of beneficial interest in connection with each Fund or Portfolio. The shares of each Fund or Portfolio are registered under the 1933 Act on Form N–1A.

Trust	Entity (date)	1940 Act file No.	Total # of fund(s)	Involved funds or portfolios	1933 Act file No.
Goldman Sachs Variable Insurance Trust (''GSVIT'') .	DE business trust (9/16/97)	811–08361	9	Goldman Sachs CORE Large Cap Growth Fund . Goldman Sachs Global Income Fund . Goldman Sachs Internet Tollkeeper Fund . CORE U.S. Equity Fund	333–35883
MFS Variable Insurance Trust (''MFSVIT'') .	MA business trust (1/28/94)	811–8326	16	MFS Global Governments Series .	33–43618
AIM Variable Insurance Funds (''AIMVIF'') .	DE business trust (5/1/00)	811–07452	16	Capital Appreciation Fund ..... Growth Fund	33–57340
Scudder Variable Series II (''SVS'') .	MA business trust (1/22/87)	811–5002	27	Growth Portfolio ..... Government Securities Portfolio	33–11802

Trust	Entity (date)	1940 Act file No.	Total # of fund(s)	Involved funds or portfolios	1933 Act file No.
Franklin Templeton Variable Insurance Products Trust (''Templeton'') .	MA business trust (4/26/88)	811–05583	27	Templeton Global Income Securities Fund .	33–23493

23. Goldman Sachs Asset Management (''GSAM'') is a business unit of the Investment Management Division of Goldman, Sachs & Co. Goldman, Sachs & Co. has been a registered investment adviser since 1981. Goldman Sachs Asset Management International (''GSAMI''), a member of the Investment Management Regulatory Organization, Limited since 1990 and a registered investment adviser since 1991, is an affiliate of Goldman, Sachs & Co. As of December 31, 2001, GSAM and GSAMI, along with other units of the Investment Management Division, managed assets of approximately $296 billion.

24. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both throughout the insured's life, and for a substantial death benefit upon the death of the insured. Under each of the Contracts, the issuing insurance company reserves the right to substitute shares of one Fund or Portfolio for shares of another, including a Fund or Portfolio of a different management investment company.

25. For as long as a variable life insurance Contract remains in force or a variable annuity contract has not yet been annuitized, a Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or a fixed account. Many of the Contracts either limit the number of transfers of Contract value to twelve per year or reserve to the issuer the right to limit the number of transfers to twelve per year.

26. Many of the Contracts either assess a transfer charge (in no case more than $35.00) on transfers in excess of a certain number per year (usually twelve) or reserve to the issuer the right to assess such a charge.

27. Applicants state that, in November of 2001, American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York were informed by GSAM and GSAMI that the latter intended to take steps to close three Funds of the Goldman Sachs Variable Insurance Trust: CORE Large Cap Growth Fund, Global Income Fund and Internet Tollkeeper Fund. In keeping with the participation agreements between GSVIT and each of the foregoing insurance companies, GSAM and GSAMI encouraged the insurance companies to help facilitate an orderly closure of the Funds by filing an application with the Commission.

28. Applicants state that the principal reason cited by GSAM and GSAMI for closing the Funds is that they have not attracted sufficient assets to obtain the economies of scale necessary to be viable in today's competitive marketplace. In order to maintain reasonable expense ratios for the three Funds, GSAM or GSAMI have reimbursed a considerable amount of the expenses of each since its inception. GSAM and GSAMI do not believe that any of the three Funds will grow to an economically viable size in the foreseeable future and therefore desire to close them and avoid future subsidies. The board of trustees of GSVIT has been consulted and agrees that this is an appropriate course of action for the Funds. At a meeting held on January 30, 2002, the board of trustees voted to authorize GSVIT's officers to liquidate each of the Funds at a reasonable date in the future. Commission orders approving the proposed substitutions would be part of the liquidation process.

29. American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York, on behalf of themselves and their Accounts propose a series of substitutions of shares held in those Accounts. The substitutions would be carried out by American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York redeeming the shares of GSVIT Funds held by their separate accounts for cash and reinvesting the cash in shares of substitute Funds or Portfolios. The table below summarizes the proposed substitutions. Numbers in parentheses next to each Contract type indicate the number of investment options currently available under such Contract.

Contract(s)	Replaced fund(s)	Replacing fund(s)
AE Annuity Account		
American Express Signature VA (48) ..... American Express Signature One VA (46)	GSVIT Internet Tollkeeper Fund	GSVIT CORE U.S. Equity Fund.
AE Life Account		
American Express Signature Variable Universal Life (42) .	GSVIT Internet Tollkeeper Fund	GSVIT CORE U.S. Equity Fund.
KILICO Account 2		
First Foundation Variable Life Insurance (17) ...	GSVIT Global Income Fund	Templeton Global Income Securities Fund.
KILICO Account II		
Series QP-I single life private placement VLI (27) .	GSVIT Global Income Fund	Templeton Global Income Securities Fund.

Contract(s)	Replaced fund(s)	Replacing fund(s)
Series QP-S joint & survivor private placement VLI (27) .	GSVIT CORE Large Cap Growth Fund	SVS Growth Portfolio.
KILICO Account III		
Series IV single life private placement VLI (39)	GSVIT Global Income Fund GSVIT CORE Large Cap Growth Fund	Templeton Global Income Securities Fund. SVS Growth Portfolio.
KILICO Account VI		
Series VII joint & survivor private placement VLI (39) .	GSVIT Global Income Fund GSVIT CORE Large Cap Growth Fund	Templeton Global Income Securities Fund. SVS Growth Portfolio.
ML Annuity Account One		
Custom VA (40) Navigator VA (55)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	MFSVIT Global Governments Series. AIMVIF Capital Appreciation Fund.
ML Annuity Account Five		
Custom VA (40) Navigator VA (55)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	MSFVIT Global Governments Series. AIMVIF Capital Appreciation Fund.
ML Annuity Account One		
7-year Class AA (55)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	SVS Government Securities Portfolio AIMVIF Capital Appreciation Fund .
ML Annuity Account Five		
7-year Class AA (55)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	SVS Government Securities Porfolio. AIMVIF Capital Appreciation Fund.
ML Life Account One		
Custom Flex VUL (single life) (37) Custom Flex VUL (joint & survivor) (37)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	MFSVIT Global Governments Series. AIMVIF Capital Appreciation Fund.
ML Life Account Five		
Custom Flex VUL (single life) (37) Custom Flex VUL (joint & survivor) (37)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	MFSVIT Global Governments Series. AIMVIF Capital Appreciation Fund.
First ML Annuity Account One		
Class AA VA (55)	GSVIT Global Income Fund GSVIT Internet Tollkeeper Fund	SVS Government Securities Portfolio. AIMVIF Capital Appreciation Fund.
SL Account F		
Futurity VA (34), Futurity II VA (67), Futurity III VA(60), Futurity Focus VA (41), Futurity Focus II VA (60), Futurity Accolade VA (64), and Futurity Select Four VA (60) .	GSVIT Internet Tollkeeper Fund GSVIT CORE Large Cap Growth Fund	AIMVIF Growth Fund.
SL Account G		
Futurity Corporate VUL (55)	GSVIT Internet Tollkeeper Fund GSVIT CORE Large Cap Growth Fund	AIMVIF Growth Fund.
SL Account I		
Futurity VUL (31), Futurity Protector VUL (41), Futurity Survivorship VUL (31), Futurity Survivorship II VUL (41), Futurity Accumulator VUL (41) .	GSVIT Internet Tollkeeper Fund GSVIT CORE Large Cap Growth Fund	AIMVIF Growth Fund
SL Account C		
Futurity N.Y. VA (35) Futurity Accolade N.Y. VA (60)	GSVIT Internet Tollkeeper Fund GSVIT CORE Large Cap Growth Fund	AIMVIF Growth Fund.

30. Applicants believe that for each proposed substitution, the investment objectives and policies of the replacing Fund(s) or Portfolio(s) are sufficiently similar to those of the replaced Fund(s) or Portfolio(s) that Contract owners will have reasonable continuity in investment expectations. Applicants also believe that the proposed substitutions will better serve the interests of Contract owners because, generally, the replacing Fund or Portfolio has lower fees or expenses, superior or comparable performance, and a larger or growing asset base in the Contract than the replaced Fund or Portfolio.

31. The investment objective, principal investment strategies or key investments, investment advisers, and management fees for each Portfolio or Fund are described below. The Funds and Portfolios are grouped together by the proposed replaced GSVIT Fund.

32. In each group, the first set of accompanying charts shows the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for each of the Funds and Portfolios involved in the proposed substitutions.

33. In each group, the second set of charts shows the annual management fees, other expenses, and total expenses of each of the Funds or Portfolios involved in the proposed substitutions both before and after any expense reimbursement or fee waivers. The management fees and expenses shown are those for the 2001 fiscal year.

34. *GSVIT Global Income Fund.* The investment objective of the Fund is to seek a high total return, emphasizing current income, and, to a lesser extent, providing opportunities for capital appreciation. The Fund invests primarily in high quality fixed-income securities of U.S. and foreign issuers and enters into foreign currency transactions to enhance returns and hedge its portfolio against currency exchange rate fluctuations. Under normal market conditions, the Fund holds at least 30% of its total assets (taking into account currency positions) in U.S. dollar denominated securities and holds securities of issuers in at least three countries. The Fund may invest more than 25% of its total assets in the securities of corporate and government issuers located in each of: Canada, Germany, Japan, and the United Kingdom as well as in the securities of U.S. issuers. The Fund does not invest more than 25% of its total assets in securities of issuers in any other single country. The Fund also may invest up to 10% of its total assets in securities of issuers in emerging markets. The Fund is non-diversified. GSAMI is the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 0.90% of its average daily net assets.

35. *Templeton Global Income Securities Fund.* The investment objective of the Fund is high current income, consistent with preservation of capital. Capital appreciation is a secondary consideration. Under normal circumstances, the Fund invests at least 65% of its total assets in the debt securities of governments and their political subdivisions and agencies, supranational organizations, and companies located anywhere in the world, including emerging markets. This Fund may invest up to 30% of net assets in below investment grade debt. Average weighted maturity of the Fund's debt securities is generally 5 to 15 years. Franklin Advisers, Inc. serves as the investment adviser to the Fund and Templeton Investment Counsel, LLC serves as subadviser. Templeton Global Income Securities Fund pays a monthly investment management fee based on a maximum annual rate of 0.625% of the average daily net assets of the Fund.

36. *MSVIT Global Government Series.* The Fund's investment objective is to provide income and capital appreciation. Under normal market conditions, the Fund invests at least 65% of its total assets in U.S. Government securities and securities of foreign governments. The Fund also may invest in debt securities of foreign and domestic corporations and in non-government mortgage-backed and asset-backed securities. U.S. Government securities are debt obligations issued by, or the principal or interest of which are guaranteed or supported by, the U.S. Government or one of its agencies or instrumentalities (including mortgage-backed securities). Securities of foreign governments include (1) securities issued, guaranteed or supported as to payment of principal and interest by foreign governments, foreign government agencies, foreign semi-government entities or supra-national entities; (2) interests issued by entities organized and operated for the purpose of restructuring the investment characteristics of foreign government securities; and (3) ''Brady'' bonds—bonds issued as part of a restructuring of defaulted commercial loans to emerging market countries. Massachusetts Financial Services Company serves as investment adviser to the Fund. The Fund pays a monthly investment management fee based on an annual rate of 0.75% of the average daily net assets of the Fund.

37. *SVS Government Securities Portfolio.* The Portfolio's investment objective is to provide high current income consistent with preservation of capital. The Portfolio normally invests at least 65% of its total assets in U.S. Government Securities and repurchase agreements of U.S. Government Securities. U.S. Government Securities in which the Portfolio may invest include direct obligations of the U.S. Treasury and securities issued or guaranteed, as to their payment of principal and interest, by U.S. Government agencies or sponsored entities. Zurich Scudder Investments, Inc. serves as the Portfolio's investment adviser. The Portfolio pays a monthly investment management fee based on an annual rate of 0.55% of its average daily net assets.

Fund	Net assets at year-end (in millions)	Expense ratio (in percent)	Total return (in percent)
GSVIT Global Income Fund:			
1999	$7	1.05	−1.01
2000	10	1.14	9.05
2001	15.5	1.15	4.80
Templeton Global Income Securities Fund:			
1999	91	0.65	−5.79
2000	81	0.72	4.32
2001	64	0.71	2.55
MFSVIT Global Governments Series:			
1999	45	1.01	−2.50
2000	50	0.96	4.90

Fund	Net assets at year-end (in millions)	Expense ratio (in percent)	Total return (in percent)
2001	47	0.92	4.48
SVS Government Securities Portfolio:			
1999	146	0.63	0.68
2000	152	0.60	10.93
2001	305	0.60	7.48

Fund	Before reimbursement or fee waiver	After reimbursement or fee waiver
GSVIT Global Income Fund	0.90	0.90
	1.50	0.25
	2.40	1.15
Templeton Global Income Securities Fund	0.60	0.60
	0.11	0.11
	0.71	0.71
MFSVIT Global Government Series	0.75	0.75
	0.37	0.17
	1.12	0.92
SVS Government Securities Portfolio	0.55	0.55
	0.05	0.05
	0.60	0.60

38. *GSVIT Internet Tollkeeper Fund.* The investment objective of the Fund is long-term growth of capital. Under normal circumstances, the Fund invests 90% of its total assets in equity securities and 65% of its total assets in securities of ''internet tollkeeper'' companies, which are companies in the media, telecommunications, technology and internet sectors which provide access, infrastructure, content and services to internet companies or internet users. Internet tollkeeper companies are ones with predictable, sustainable or recurring revenue streams that, like a toll collector for a highway or bridge, grow revenue by increasing ''traffic,'' or customers and sales, and raising ''tolls,'' or prices. The Fund also may invest up to 35% of its total assets in securities of companies whose rapid adoption of an internet strategy is expected to improve their cost structure, revenue opportunities or competitive advantage or internet-based companies that exhibit a sustainable business model. The Fund may invest up to 25% of its total assets in foreign securities including securities of issuers in emerging markets or countries. GSAM serves as the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 1.00% of its average daily net assets.

39. *GSVIT CORE U.S. Equity Fund.* The Fund's investment objective is long-term growth of capital and dividend income. The Fund seeks this objective through a broadly diversified portfolio of large-cap and blue chip equity securities representing all major sectors of the U.S. economy. Under normal circumstances, the Fund invests 90% of its total assets in equity securities of U.S. issuers, including securities of foreign issuers traded in the U.S. The Fund also seeks to maximize its expected return while maintaining a risk, style, capitalization and industry characteristics similar to the S&P 500 Index. GSAM serves as the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 0.70% of its average daily net assets.

40. *AIMVIF Capital Appreciation Fund.* The Fund's investment objective is growth of capital. The Fund seeks its objective by investing principally in common stocks of companies that the investment adviser believes are likely to benefit from new or innovative products, services or processes as well as those that have experienced above-average long-term growth in earnings and have excellent prospects for future growth. The Fund may invest up to 25% of its assets in foreign securities. AIM Advisors, Inc. serves as the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 0.65% of the first $250 million of average daily net assets and 0.60% of average daily net assets in excess of $250 million.

41. *AIMVIF Growth Fund.* The Fund's investment objective is growth of capital. The Fund seeks its objective by investing principally in securities of seasoned and better capitalized companies with strong earnings momentum. The Fund may invest up to 25% of its assets in foreign securities. AIM Advisors, Inc. serves as the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 0.65% of the first $250 million of average daily net assets and 0.60% of average daily net assets in excess of $250 million.

Fund	Net assets at year-end (in millions)	Expense ratio (in percent)	Total return (in percent)
GSVIT Internet Tollkeeper Fund:			
1999	N/A	N/A	N/A
2000	$5	1.25	−32.00
2001	4.3	1.25	−33.68

Fund	Net assets at year-end (in millions)	Expense ratio (in percent)	Total return (in percent)
GSVIT CORE U.S. Equity Fund:			
1999	52	0.80	24.30
2000	139	0.85	−9.62
2001	164	0.81	11.94
AIMVIF Capital Appreciation Fund:			
1999	1,131	0.73	44.61
2000	1,534	0.82	−10.91
2001	1,160	0.85	−23.28
AIMVIF Growth Fund:			
1999	704	0.73	35.24
2000	879	0.83	−20.49
2001	601	0.88	−33.86

Fund	Before reimbursement or fee waiver (in percent)	After reimbursement or fee waiver (in percent)
GSVIT Internet Tollkeeper Fund	1.00	1.00
	2.47	0.25
	3.47	1.25
GSVIT CORE U.S. Equity Fund	0.70	0.70
	0.12	0.11
	0.82	0.81
AIMVIF Capital Appreciation Fund	0.61	0.61
	0.24	0.24
	0.85	0.85
AIMVIF Growth Fund	0.62	0.62
	0.26	0.26
	0.88	0.88

42. *GSVIT CORE Large Cap Growth Fund.* The Fund's investment objective is long-term growth of capital with dividend income as a secondary consideration. The Fund seeks its primary objective through a broadly diversified portfolio of equity securities of large-cap U.S. issuers that are expected to have better prospects for earnings growth than the growth rate of the general domestic economy. Under normal circumstances, the Fund invests 90% of its total assets in equity securities of U.S. issuers, including securities of foreign issuers traded in the U.S. The Fund also seeks to maximize its expected return while maintaining a risk, style, capitalization and industry characteristics similar to the Russell 1,000 Growth Index. GSAM serves as the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 0.70% of its average daily net assets.

43. *SVS Growth Portfolio.* The Portfolio's investment objective is maximum appreciation of capital. The Portfolio normally invests at least 65% of its total assets in common stocks of large (market capitalization over $1 billion) U.S. companies. The Portfolio tries to maintain holdings diversified across industries and companies and generally tries to keep its sector weightings similar to those of the Russell 1000 Growth Index. The Portfolio typically invests at least 70% of its total assets in securities of ''stable growth'' companies (ones with strong business lines and potentially sustainable earnings growth), up to 25% of its total assets in securities of ''accelerating growth'' companies (those with a history of strong earnings growth and potential for continued growth), and up to 15% of its total assets in securities of ''special situation'' companies (ones that appear likely to become stable growth companies or accelerating growth companies through new products, restructuring, change in management or other catalysts. The Portfolio also may invest up to 25% of its total assets in foreign securities. Zurich Scudder Investments, Inc. serves as the Portfolio's investment adviser. The Portfolio pays a monthly investment management fee based on an annual rate of 0.60% of its average daily net assets.

44. *AIMVIF Growth Fund.* The Fund's investment objective is growth of capital. The Fund seeks its objective by investing principally in securities of seasoned and better capitalized companies with strong earnings momentum. The Fund may invest up to 25% of its assets in foreign securities. AIM Advisors, Inc. serves as the Fund's investment adviser. The Fund pays a monthly investment management fee based on an annual rate of 0.65% of the first $250 million of average daily net assets and 0.60% of average daily net assets in excess of $250 million.

Fund	Net assets at year-end (in millions)	Expense ratio (in percent)	Total return (in percent)
GSVIT CORE Large Cap Growth Fund:			

Fund	Net assets at year-end (in millions)	Expense ratio (in percent)	Total return (in percent)
1999	$24	0.80	35.42
2000	26	0.89	−22.48
2001	22	0.90	−20.76
SVS Growth Portfolio:			
1999	738	0.66	37.12
2000	583	0.65	−19.06
2001	420	0.63	−22.34
AIMVIF Growth Fund:			
1999	704	0.73	35.24
2000	879	0.83	−20.49
2001	601	0.88	−33.86

Fund	Before reimbursement or fee waiver (in percent)	After reimbursement or fee waiver (in percent)
GSVIT CORE Large Cap Growth Fund	0.70	0.70
	0.69	0.20
	1.39	0.90
SVS Growth Portfolio	0.60	0.60
	0.03	0.03
	0.63	0.63
AIMVIF Growth Fund	0.62	0.62
	0.26	0.26
	0.88	0.88

45. Each Applicant believes that it has selected an appropriate Fund or Portfolio available under each Contract to replace the GSVIT CORE Large Cap Growth Fund, GSVIT Global Income Fund or GSVIT Internet Tollkeeper Fund. For all of the proposed substitutions, the replacing Funds or Portfolios are substantially larger and have lower expense ratios than the Funds they would replace. Likewise, each of the replacing Funds or Portfolios have significantly better prospects for future growth and increasing economies of scale than the Funds they would replace. No class of replacing Fund or Portfolio shares proposed for use in the proposed substitutions is subject to a distribution or shareholder service plan adopted under Rule 12b–1 of the Act and no replacing Fund or Portfolio is operated by its investment manager or adviser under a ''manager of managers'' exemption from certain requirements of Section 15 of the Act.

46. No class of replacing Fund or Portfolio shares proposed for use in the proposed substitutions is subject to a distribution or shareholder service plan adopted under Rule 12b–1 of the Act and no replacing Fund or Portfolio is operated by its investment manager or adviser under a ''manager of managers'' exemption from certain requirements of Section 15 of the Act. American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada and Sun Life New York will not receive, for three years from the date of the substitutions, any direct or indirect benefits from the replacing Funds or Portfolios, their advisers or underwriters, or from affiliates of the replacing Funds or Portfolios, their advisers or underwriters, in connection with assets attributable to the Contracts affected by the substitutions, at a higher rate than each received from the replaced Funds or Portfolios, their advisers or underwriters, or from affiliates of the replaced Funds or Portfolios, their advisers or underwriters, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue-sharing or other arrangements. American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada and Sun Life New York each represent that the substitutions it carries out and its selection of replacing Funds or Portfolios was not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by any of the replacing Funds or Portfolios, their advisers or underwriters, or by the affiliates of the replacing Funds or Portfolios, their advisers or underwriters.

47. Where a Contract does not offer a Fund or Portfolio comparable to the Fund being replaced, each Applicant proposes as an alternative replacement, a Fund or Portfolio which either (1) invests in substantially similar types of securities, but has broader investment objective(s) and investment strategies than the one it would replace, or (2) invests in higher grade debt securities than the one it would replace. Applicants state that although Templeton Global Income Securities Fund may invest in below investment grade debt securities and GSVIT Global Income Fund may not, investment in such securities has only modest potential to make the overall risk of the Templeton Global Income Securities Fund's portfolio greater than that of GSVIT Global Income Fund. In light of how few global or international debt mutual funds exist in the underlying insurance fund universe, very few substitution candidates exist for GSVIT Global Income Fund. Applicants believe that, under the circumstances, Templeton Global Income Securities Fund offers the greatest available continuity in investment objectives and strategies and therefore is most likely to meet the expectations of Contract owners and that the differences between these two Funds does not justify moving Contract owners Contract values to a Fund or Portfolio with investment objective(s) or strategies substantially

different from those of GSVIT Global Income Fund.

48. Proposed substitution of shares of Templeton Global Income Securities Fund, MFSVIT Global Governments Series, or SVS Government Securities Portfolio for shares of GSVIT Global Income Fund. Two of the three replacement Funds have substantially identical investment objectives as the replaced Fund and both pursue their objective by investing primarily in debt securities of issuers around the world. The third replacement Fund has the substantially identical investment objective, but pursues it by investing primarily in U.S. Government debt securities. There are some distinctions between the strategies pursued by the replacement Funds and those pursued by the replaced Fund.

49. GSVIT Global Income Fund may emphasize corporate issuers over government issuers and invest more of its assets in the United States and Western Europe than do the replacement Funds. In contrast, MFSVIT Global Government Series may invest a substantial majority of its assets in securities of government issuers and both it and Templeton Global Income Securities Fund may invest a greater portion of their assets than GSVIT Global Income Fund in securities of issuers located outside the U.S. or Western Europe. Nevertheless, these two proposed substitutions offer the greatest available continuity in investment objectives and strategies and therefore are most likely to meet the expectations of Contract owners. At the end of 2001, more than 50% of GSVIT Global Income Fund's total assets were invested in securities of government issuers in the U.S. and abroad.

50. SVS Government Securities Portfolio differs from GSVIT Global Income Fund in that it invests primarily in U.S. Government Securities. Thus, this replacement Portfolio is more conservative and entails considerably less investment risk than the Fund it would replace. At the end of 2001, more than 25% of GSVIT Global Income Fund's total assets were invested in U.S. Government securities. For Contracts as to which SVS Government Securities Portfolio is the proposed replacement, it represents the closest match of investment objective and strategies of the alternatives that do not have 12b-1 plans or are otherwise unsuitable for a substitution.

51. Proposed substitution of shares of GSVIT CORE U.S. Equity Fund, AIMVIF Capital Appreciation Fund or AIMVIF Growth Fund for shares of GSVIT Internet Tollkeeper Fund. All three replacement Funds have substantially the same investment objectives as the replaced Fund except that GSVIT CORE U.S. Equity Fund also has dividend income as a secondary objective. The replacement Funds' investment strategies are somewhat different from those of the replaced Fund in that each invests in equity securities of issuers representing a broad range industry sectors and does not focus on ''internet tollkeeper'' issuers as defined by GSVIT Internet Tollkeeper Fund. Also, one of the replacement Funds has a more limited ability to invest in foreign securities than do the other two or the replaced Fund. Nevertheless, these proposed substitutions will not frustrate Contract owners ability to pursue their investment goals by investing in a portfolio having as its principal objective, capital appreciation. As with the prior group of proposed substitutions, these substitutions offer the greatest continuity in investment objectives and strategies available from Funds or Portfolios that do not have 12b–1 plans or investment advisers that rely on ''manager of managers'' exemptions and therefore are most likely to meet the expectations of Contract owners.

52. Proposed substitution of shares of SVS Growth Portfolio or shares of AIMVIF Growth Fund for shares of GSVIT CORE Large Cap Growth Fund. Although the replacement Funds do not share the replaced Fund's secondary investment objective of seeking dividend income and may invest a greater portion of their assets in foreign securities (25% as opposed to 10%), they pursue their objectives with similar strategies and offer investors a portfolio of substantially the same large capitalization equity securities diversified across economic and industry sectors. In fact, SVS Growth Portfolio and GSVIT CORE Large Cap Growth Fund both try to maintain industry sector weightings similar to those of the Russell 1000 Growth Index. These proposed substitutions will not frustrate Contract owners ability to pursue their investment goals by investing in a portfolio of securities managed using a growth orientation.

53. By supplements to the various May 1, 2001 prospectuses for the Contracts (or by letter to owners of unregistered Contracts) and the Accounts (substantially in the form attached as Exhibit C to the initial application), American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York will notify owners of their Contracts of their intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of the Funds and Portfolios as described herein.

54. The supplements (or letters) about the proposed substitutions will advise (or have advised) Contract owners that, from the date of the supplement (or letter) until the date of the proposed substitution, American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions, with the exception that an Insurance Company Applicant may impose restrictions to prevent or restrict ''market timing'' activities by Contract owners or their agents. Similarly, the supplements (or letters) will disclose (or have disclosed) that, from the date of the supplement (or letter) until the date of the substitutions, American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York will permit Contract owners to make one transfer of Contract value out of a subaccount to be affected by the proposed substitutions to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge. The supplements (or letters) also will advise Contract owners that if the proposed substitutions are carried out, then each Contract owner affected by a substitution will be sent a written notice (described below) informing them of the fact and details of the substitutions.

55. Applicants state that the proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or American Enterprise's, KILICO's, MetLife's, MetLife California's, First MetLife's, Sun Life Canada's, and Sun Life New York's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including brokerage commissions, legal, accounting, and other fees and expenses, will be paid by American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York, or by GSAM or GSAMI. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges

currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

56. Applicants state that the proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York will not exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions. Similarly, (1) prior to the substitutions, American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York will permit Contract owners to make one transfer of Contract value out of a subaccount to be affected by the proposed substitutions to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge, and (2) for at least 30 days following the substitutions, American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York will permit Contract owners affected by the substitutions to make one transfer of Contract value out of a subaccount affected by the substitutions to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge.

57. Applicants state that in addition to the supplements (or letters) distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who are affected by a substitution will be sent a written notice informing them that the substitutions were carried out. The notice also will reiterate the facts that American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York: (1) will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions, and (2) will, for at least 30 days following the substitutions, permit such Contract owners to make one transfer of Contract value out of an affected subaccount to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge. Current prospectuses for the new Funds or Portfolios will be sent to Contract owners on or before the time the notices are sent. The notice as delivered in certain jurisdictions also may explain that, under insurance regulations in those jurisdictions, Contract owners affected by the substitutions may exchange their Contract for a fixed-benefit life insurance contract or fixed-benefit annuity contract during the 60 days following the substitutions.

58. American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Legal Analysis

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Specifically, Section 26(c) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Section 26(c) was added to the Act by the Investment Company Amendments of 1970 (''1970 Amendments''). Prior to the enactment of the 1970 Amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

3. Congress responded to the Commission's concerns by enacting Section 26(c) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts. The Senate Report on the bill explained the purpose of the amendment as follows:

> The proposed amendment recognizes that in the case of the unit investment trust holding the securities of a single issuer notification to shareholders does not provide adequate protection since the only relief available to shareholders, if dissatisfied, would be to redeem their shares. A shareholder who redeems and reinvests the proceeds in another unit investment trust or in an open-end company would under most circumstances be subject to a new sales load. The proposed amendment would close this gap in shareholder protection by providing for Commission approval of the substitution. The Commission would be required to issue an order approving the substitution if it finds the substitution consistent with the protection of investors and provisions of the Act.

4. Applicants state that the proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(c) of the Act. Applicants therefore request orders from the Commission pursuant to Section 26(c) approving the proposed substitutions.

5. Applicants state that all the Contracts expressly reserve for American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, or Sun Life New York, as applicable, the right, subject to compliance with applicable law, to substitute shares of one Fund or Portfolio held by subaccount of an Account for another. The prospectuses (or private placement memoranda) for the Contracts and the Accounts contain appropriate disclosure of this right.

6. American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York reserved this right of substitution both to protect themselves and their Contract owners in situations where they believe a Fund or Portfolio is no longer appropriate for Contract owners or where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

7. Applicants maintain that Contract owners will be better served by the proposed substitutions. The substitutions proposed are the most appropriate ones given the Funds and Portfolios available under the various Contracts. In addition, each new Portfolio or Fund has had lower expenses in recent years than the Portfolios or Funds that it would replace.

8. For each of the proposed substitutions, Applicants believe that

the new Portfolios or Funds are either substantially the same or more conservative in their investment objective(s) or strategies or both, than the Portfolios or Funds that they would replace. Likewise, Applicants believe that a majority of the new Portfolios or Funds have a substantially similar or lower investment risk profile than the Portfolios or Funds each would replace.

9. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

10. Applicants believe that Contract owners will be at least as well off with the proposed array of subaccounts to be offered under each Contract after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract owners the investment flexibility, which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitutions.

11. Applicants assert that each of the proposed substitutions is not the type of substitution Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption Section 26(c) was designed to prevent.

12. Applicants further assert that the proposed substitutions are unlike the type of substitution Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of insurance coverage offered by American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, or Sun Life New York under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type, and reputation for service of the Applicant from whom they purchased their Contract. These factors will not change because of the proposed substitutions.

Conclusion

Applicants request orders of the Commission pursuant to Section 26(c) of the Act approving the proposed substitutions by American Enterprise, KILICO, MetLife, MetLife California, First MetLife, Sun Life Canada, and Sun Life New York. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9089 Filed 4–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45703; File No.SR–Amex–2002–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

April 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended in January 2002, and expired on April 7, 2002.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, and extended again in October 2001. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001), and 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the more than a year and a half since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–27 and should be submitted by May 6, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through July 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[5] Amex trading floor provide specialists with a greater than equal participant in trades that take place at price at which the specialist is on parity with registered options traders in the crowd. These practices are subjects to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex-00-49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.,* Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45711; File No. SR–Amex–2001–74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Codification of Its Auto-Ex Policy and Calculation of the NBBO for Use in Auto-Ex

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 10, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. Amex submitted Amendment No. 1 to the proposed rule change on January 31, 2002.[3] Amex submitted Amendment No. 2 to the proposed rule change on April 8, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) Set forth in greater detail the proposed circumstances under which Auto-Ex can be disengaged or operated other than in the normal manner and the required documentation, and (2) proposed rule 933(d) which sets forth Amex's policy for determining that the quotes being disseminated by another options exchange are not reliable and excluding those quotes from the calculation of its NBBO. *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission, dated January 30, 2002 (''Amendment No. 1''). Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] In Amendment No. 2, the Exchange (1) Made several nonsubstantive corrections to its rule text; (2) set forth specific parameters for when Auto-Ex could be disengaged due to an influx of order executions; (3) revised the circumstances that Amex may rely upon in determining that the quotes being disseminated by another options exchange are not reliable and excluding those quotes from the calculation of its NBBO; (4) added language to clarify that the duration of the disengagement of Auto-Ex and the decision to reengage Auto-Ex will be documented; and (5) added language to clarify that the exclusion of an exchange or its quotes from the Auto-Ex determination of the NBBO will be reported to the regulatory authorities at the Exchange. *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated April 1, 2002 (''Amendment No. 2'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to codify in Amex Rule 933 its practices and policies by specifying (i) the circumstances under which the Exchange's automatic execution system (''Auto-Ex'') can be disengaged or operated in a manner other than the normal manner set forth in Exchange rules and policies; (ii) the required documentation of the reasons for any actions to disengage Auto-Ex or to operate in a manner other than normal; and (iii) the circumstances under which Amex may determine that the quotes being disseminated by another options exchange are not reliable and exclude those quotes from the calculation of the National Best Bid or Offer (''NBBO''). Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 933 Automatic Execution of Options Orders

(a) through (b) No change.

(c) (i) Auto-Ex may be disengaged or operated in a manner other than the normal manner in the following circumstances:

A. Temporary Disengagement of Auto-Ex During Market Data Delays—Senior Market Operations staff, in conjunction with the Floor Governors, may determine to disengage Auto-Ex due to market data dissemination delays at the Options Price Reporting Authority (''OPRA'') or internally at the Exchange. Auto-Ex may be disengaged for one option class, a group of option classes, or all option classes floor-wide;

B. Temporary Disengagement of Auto-Ex Pursuant to Unusual Market Exception—Pursuant to procedures set forth in Rule 958A(d), the Market Operations Division in consultation with a Floor Official may determine to disengage Auto-Ex if the Exchange is unable to accurately collect, process, and/or disseminate quotation data owing to the high level of trading activity or the existence of unusual market conditions which result in the suspension of firmquote rule obligations on the Exchange and its members and member organizations as set forth in Exchange Rule 958A(d) and Rule 11Ac1–1(b)(3) under the Securities Exchange Act of 1934;

C. Temporary Disengagement of Auto-Ex During Unusual Market Conditions—The Market Operations Division, with Floor Governor or Senior Supervisory Official approval, may disengage Auto-Ex during unusual market conditions in respect of an option class(es) or their underlying security(ies). Unusual market conditions may include (i) significant or market disruptive order imbalances in the option class or series, or the underlying security; or (ii) unusually wide or market disrupting spreads between the bid and the offer in the underlying security.

D. Temporary Disengagement of Auto-Ex as the Result of Systems Malfunctions—The Market Operations Division, with Floor Governor or Senior Supervisory Official approval, may disengage Auto-Ex as the result of systems malfunctions that affect the Exchange's ability to (i) disseminate or update market quotes; or (ii) deliver orders to the trading floor in a timely manner;

E. Automatic Disengagement of Auto-Ex Due to an Influx of Order Executions—In certain option classes, Auto-Ex may be disengaged when a specified number of automatic executions occur in that option class. The specialist in each options class has the discretion to determine whether to allow Auto-Ex to be automatically disengaged due to the influx of order executions and the number of automatic order executions that need to occur before Auto-Ex is automatically disengaged. The specialist must receive Floor Governor approval to set the number of automatic executions at one. Use of this feature does not relieve the specialist or registered options traders, as the responsible broker or dealer, from their obligations under Rule 958A and Rule 11Ac1–1 under the Securities Exchange Act of 1934. Once the disengagement occurs the specialist and the Exchange's Post Supervisor are notified immediately and Auto-Ex is generally re-engaged within one to five minutes. Any extended use of the by-pass feature will need Floor Official approval and must meet the standards for either a market data delay, an Unusual Market Exception, unusual market conditions or systems malfunctions; and

F. Automatic By-Pass of Auto-Ex in response to Certain Market Activity—Orders otherwise eligible for Auto-Ex may be by-passed during certain market situations and sent to the specialist for execution. Such situations include: (i) Whenever the bid or offer in a specific option series represents a limit order on the specialist's book; (ii) whenever a crossed or locked market causes an inversion in the quote; or (iii) whenever a better bid or offer is being disseminated by another options exchange and the order is not eligible for automatic price matching as set forth in Commentary .01(b);

(ii) In all situations set forth in (c)(i) above, the Exchange will document in either the Systems Support Log, or the Service Desk Log, any action taken to disengage Auto-Ex or to operate Auto-Ex in a manner other than normal, the action taken, the time of the action, the option class(es) affected, the identity of the Exchange or Floor official approving the action and a brief summary of the reason for the decision. Auto-Ex will generally be re-engaged when Market Operations determines that the cause of its disengagement has ceased. The Log(s) will indicate when Auto-Ex is re-engaged, if such re-engagement occurred during the same trading day. If no time of re-engagement is shown on the Log(s) that indicates Auto-Ex was disengaged for the remainder of the trading day. The Exchange will also document the reason for and the Exchange or Floor Official approving the re-engagement if such re-engagement was for a reason other than the cessation of the condition that led to the disengagement.

(d) On occasion the Amex must make the determination that the quotes being disseminated by another options exchange are not reliable and exclude those quotes from the calculation of its NBBO. A Floor Governor or Exchange Official may make this determination based on any of the following circumstances: (i) the other option exchange's quotes are not firm based upon direct communication from that exchange or the dissemination through OPRA of a message indicating the quotes are not firm; or (ii) the other options exchange has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes. In all such cases the situation will be documented by the Market Operations staff and reported to the regulatory authorities at the appropriate exchange.

In all cases, where a Floor Governor or Exchange Official excludes an exchange or any of its quotes from the Auto-Ex determination of the NBBO due to quote unreliability, Market Operations staff will promptly notify the exchange of the action, continue to monitor the reliability of the excluded quotes in consultation with the Floor Governor or Exchange Official, and maintain records showing the date, time, duration, and reasons for each such action, as well as the identity of the Floor Governor or Exchange Official who authorized the action. Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to the above will expire at the end of the trading day, or at such time as the quotes are confirmed by the exchange to be reliable again—whichever occurs first. Exclusion of an exchange or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Auto-Ex provides the options investor with an important and useful tool in today's trading environment—an efficient means of obtaining a rapid, guaranteed execution of a market or marketable limit order. In addition, automatic executions have reduced the costs of trades generally and have enabled traders, specialists and the Exchange itself to better manage the tremendous volume of transactions that our markets now regularly experience. Auto-Ex is available in all option classes traded at the Exchange for public customer orders of up to 100 contracts. [5] Auto-Ex accounts for approximately 6.8% of the option volume executed on the Exchange and approximately 24.6% of the systems-delivered executed orders. To operate efficiently, Auto-Ex provides that all public customer market and marketable limit orders within the appropriate size parameters be executed at the prevailing best bid or offer with either the specialist or a registered options trader as the contra-party to the transaction. Since its implementation, the Exchange has developed certain policies regarding the use of Auto-Ex and the circumstances by which Auto-Ex may be disengaged or operated in a manner other than the normal manner. To ensure that actions taken to disengage Auto-Ex or to allow Auto-Ex to operate in other than the normal manner are done so in accordance with authority provided by Exchange rules, the Exchange has put in place specific procedures by which such actions must be taken and how such actions must be documented. Depending on the reason for the disengagement, the Exchange uses either the Systems Support Log or the Service Desk Log to document the action taken, the time of the action, the option class(es) affected, the identity of the Exchange Floor Official approving the disengagement and a brief summary of the reason for the decision. The Log(s) also indicate when Auto-Ex is re-engaged, if such re-engagement occurred during the same trading day. If the time of re-engagement is not shown on the Log(s) that indicates Auto-Ex was disengaged for the remainder of the trading day. The Exchange will also document the reason for re-engagement if such re-engagement was for a reason other than the cessation of the condition that led to the disengagement (*e.g.,* the Exchange determined to re-engage Auto-Ex even though an Unusual Market Exception to the firm quote rule continued to apply.) Members are kept fully apprised of actions taken with respect to Auto-Ex by announcements over the trading floor public address system, trading floor message boards and administrative messages via the Booth Automated Routing System (''BARS''). These detailed procedures together with the proper application of and notification to the membership when such actions are taken, demonstrate the Exchange's dedication to ensure that both members and investors are well informed about the operation of Auto-Ex and the circumstances when it may not be available.

It should be noted, however, the disengagement or by-passing of Auto-Ex does not mean that Auto-Ex eligible market or marketable limit orders fail to receive a timely and appropriate execution. Whenever Auto-Ex is disengaged or by-passed, orders are immediately routed by the Amex Order File (''AOF'') to the Amex Options Display Book (''AODB'') for execution. Within seconds, the market or marketable limit order is presented to the specialist and highlighted on the AODB screen. The specialist executes the order by simply ''clicking on it'' and the market or marketable limit order generally receives the same price or better (depending on the reason Auto-Ex

[5] Auto-Ex was initially approved in 1985 to allow orders of up to 10 contracts to be automatically executed. Over the years the Exchange has recognized that the order size for some option classes should be larger. The Exchange has obtained SEC approval to increase the order size for select option classes to 20, 50, 75 and most recently 100 contracts (*See* Securities Exchange Act Release No. 43660 (December 4, 2000) 65 FR 77942 (December 13, 2000)).

is bypassed) it would have received if executed on Auto-Ex. Indeed, the specialist and registered options traders, as the responsible broker or dealer, regardless of whether the order is automatically executed, continue to be obligated under the firm quote rule (Exchange Rule 958A) to execute the order at the disseminated quotation in an amount up to the published quotation size, except when an unusual market exception has occurred as defined in the Rule. It should also be noted, member firms that send orders to the Exchange and are charged with the responsibility of obtaining ''best execution'' for their customer orders are given on a monthly basis for each option class traded, a report indicating the average number of seconds it takes market and marketable limit orders to be executed on the Exchange. Thus, member firms are fully aware when making order routing decisions of the average time it takes to receive an execution on the Exchange for orders executed through Auto-Ex or the AODB.

The Exchange is now proposing to codify in Amex Rule 933(c) its current practices and policies by specifying (i) the circumstances under which Auto-Ex can be disengaged or operated in a manner other than the normal manner set forth in Exchange rules and policies; and (ii) the required documentation of the reasons for any actions to disengage Auto-Ex or to operate in a manner other than normal. The following are specific instances where Auto-Ex may be disengaged or operated in other than the normal manner.

Temporary Disengagement of Auto-Ex During Market Data Delays

The Exchange's Market Operations Division reviews on a case-by-case basis, in consultation with the Exchange's Floor Governors when deciding to disengage Auto-Ex due to market data delays either at the Options Price Reporting Authority (''OPRA'') or internally at the Amex. Market Operations can disengage Auto-Ex for one option class, a group of option classes, or all option classes floor-wide. Market data delays can include delays (i) in the Exchange disseminating quotations or last sale information to OPRA; (ii) in receiving information from OPRA to be displayed on the trading floor or used to calculate the best bid or offer; or (iii) in receiving market information regarding the underlying security. During the past year, market data delays have occurred infrequently due to significant improvements in OPRA's and the Exchange's message capacities and internal quote mitigation efforts. In previous years, when market data delays were more frequent, general guidelines were established by the Exchange's Floor Governors to assist senior Market Operations staff when making the decision to disengage Auto-Ex due to such a delay. Those guidelines are no longer in use; senior Market Operations staff together with the Floor Governors review each market data delay individually and make a determination to disengage Auto-Ex based on specific facts. Auto-Ex is generally re-engaged as soon as the market data delay has ended.

Disengagement of Auto-Ex due to market data delays is documented in each instance in the Systems Support Log. The Log notes the class(es) affected by the market data delay, time the disengagement started and ended, the reason for the determination and the Floor Governor(s) involved in the determination. If Auto-Ex is re-engaged during that trading day, the time of re-engagement is noted on the Log and if the re-engagement is for a reason other than the cessation of the market data delay, the reason is also noted in the Log.

Temporary Disengagement of Auto-Ex Pursuant to the Unusual Market Exception

Rule 11Ac1–1(b)(3) under the Act [6] and Exchange Rule 948A(d) (''Firm Quote Rules'') provide that if the Exchange determines that the level of trading activity or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing and making available quotation data in a manner that accurately reflects the current state of the market, the Firm Quote Rule obligations imposed on the Exchange and its member shall be suspended. The Market Operations staff in consultation with a Floor Official may determine to disengage Auto-Ex for the duration of the Unusual Market Exception. Documentation of this disengagement of Auto-Ex shall be maintained in either the Systems Support Log or the Service Desk Log depending on the cause of the unusual market condition. The Log notes the class(es) affected by the Unusual Market Exception, time the disengagement started and ended, the reason for the determination and the Floor Official involved in the determination. If Auto-Ex is re-engaged during that trading day, the time of re-engagement is noted on the Log and if the re-engagement is for a reason other than the cessation of the Unusual Market Exception, the reason is also noted in the Log.

Temporary Disengagement of Auto-Ex During Unusual Market Conditions or Systems Malfunctions

The Market Operations Division, with Floor Governor or Senior Supervisory Official approval, may disengage Auto-Ex during unusual market conditions in respect of an option class(es) or their underlying security(ies). Unusual market conditions may include (i) significant or market disruptive order imbalances in the option class or series, or the underlying security;[7] or (ii) unusually wide or market disrupting spreads between the bid and the offer in the underlying security. Documentation of the disengagement of Auto-Ex due to unusual market conditions is made in the Service Desk Log. With respect to systems malfunctions that affect the Exchange's ability to (i) disseminate or update market quotes; or (ii) deliver orders to the trading floor in a timely manner, senior Market Operations staff determines whether to disengage Auto-Ex. Documentation of the disengagement of Auto-Ex due to systems malfunctions is made in the Systems Support Log. Both documentation Logs indicate the class(es) affected, the reason(s) for the disengagement, approval by the appropriate official (with respect to disengagement for unusual market conditions) and the time the disengagement started and ended. If Auto-Ex is re-engaged during that trading day, the time of re-engagement is noted on the Log and if the re-engagement is for a reason other than the cessation of the Unusual Market Exception, the reason is also noted in the Log.

Automatic By-pass of Auto-Ex Due to an Influx of Order Executions

In certain option classes (generally the less active classes) the Exchange allows Auto-Ex to be by-passed when a specified number of automatic executions in that option class occur. The specialist determines the number of executions that can occur before this by-pass feature is activated. The specialist's determination depends on a number of factors, such as the volatility of the underlying security and amount of activity in the option class or series. However, in order to set the number of automatic executions at one, the

[6] 17 CFR 240.11AC1–1(b)(3).

[7] Pursuant to Exchange Rules 958A and 115 and New York Stock Exchange Rule 60, at 3:40 p.m. each trading day order imbalances are required to be publicly announced. On occasion, these order imbalances are significant and may necessitate the disengagement of Auto-Ex.

specialist must receive the approval of a Floor Governor. Use of this feature does not relieve the specialist or registered options traders, as the responsible broker or dealer, from their obligations under Rule 958A and Rule 11Ac1–1 under the Securities Exchange Act of 1934. Once the disengagement occurs the specialist and Post Supervisor are notified immediately and Auto-Ex is generally turned back on shortly thereafter. Any extended use of the by-pass feature will need Floor Official approval and must meet the standards for either a market data delay, an Unusual Market Exception, unusual market conditions or systems malfunctions. Pursuant to the firm quote rule (Rule 958A(c)(ii)), the responsible broker or dealer, when in the process of effecting a transaction in an option class or series, is not obligated to execute a transaction when he has revised or is in the process of revising the bid, offer or quotation size. This by-pass feature provides the responsible broker or dealer with the ability to react to automatic executions in the option series or class by allowing the responsible broker or dealer to execute the order, if appropriate under the firm quote rule, at the revised bid or offer or in the amount of the revised quotation size.

It should be noted that when Auto-Ex is by-passed or disengaged in this and other situations, all orders that would have otherwise been executed by Auto-Ex (market and marketable limit orders within the size parameters) are sent directly to the Amex Options Display Book (AODB) for execution by the specialist. As discussed above the by-passing of Auto-Ex in this (and other) situations does not mean that Auto-Ex eligible market or marketable limit orders fail to receive a timely and appropriate execution. The Exchange, on a monthly basis, submits to each firm executing options trades on the Exchange a report, which indicates on a class by class basis extensive information regarding the execution of orders including the average number of seconds it takes an order sent through the electronic order routing systems to receive an execution. Members use these reports to determine whether they are meeting their ''best execution'' obligations. The Exchange believes that the information included in this report is a more useful barometer of execution quality than information indicating that Auto-Ex may be by-passed in certain situations and executed through the AODB.

The Exchange is currently developing a system to document each situation when the automatic by-pass was activated and a monthly print-out of each situation will be kept by the Post Supervisor and the Market Operations Division. This information will be made available to the Trading Analysis Division to monitor appropriate use of this by-pass feature.

Automatic By-Pass of Auto-Ex in Response to Certain Market Activity

The automatic by-pass feature provides in certain market situations for orders that are otherwise eligible for Auto-Ex to by-pass Auto-Ex and be sent to the AODB for execution handling by the specialist. Auto-Ex is by-passed in the following situations: (i) Whenever the bid or offer in a specific option series represents a limit order on the specialist's book; (ii) whenever a crossed or locked market causes an inversion in the quote; (iii) whenever a better bid or offer is being disseminated by another options exchange;[8] and (iv) whenever a registered options trader or a floor broker on behalf of a customer order improves the quotation [9]. AOF, the Exchange's host order processing system, keeps a record of each instance an otherwise eligible Auto-Ex order by-passes Auto-Ex and is sent to the AODB for execution by the specialist. This information is used by the Trading Analysis Division to monitor appropriate use of this by-pass feature.

Calculation of the NBBO for Use in Auto-Ex

As discussed above, for Auto-Ex to operate efficiently and effectively, all market data must be received in a timely manner, including market data received from other options exchanges multiply trading a particular option class. Although there is currently no rule at the Amex or at any of the other options exchanges prohibiting the trading through of a better market away,[10] the Amex has committed to its membership and investors, that it will not automatically execute an order if a better market is being disseminated elsewhere. In order to determine whether such a better market away exists, the Amex must collect reliable market data from the other options exchanges in order to calculate the National Best Bid or Offer (''NBBO''). On occasion the Amex must make the determination that the quotes being disseminated by another options exchange are not reliable and exclude those quotes from the calculation of its NBBO. A Floor Governor or Exchange Official may make this determination based on one of the following circumstances: (i) The other options exchange's quotes are not firm based upon direct communication from that exchange or the dissemination through OPRA of a message indicating the quotes are not firm; or (ii) the other options exchange has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes.

In all cases where a Floor Governor or Exchange Official excludes an exchange or any of its quotes from the Auto-Ex determination of the NBBO due to quote unreliability, Market Operations staff will promptly notify the exchange of the action, continue to monitor the reliability of the excluded quotes in consultation with the Floor Governor or Exchange Official, and maintain records showing the date, time, duration, and reasons for each such action, as well as the identity of the Floor Governor or Exchange Official who authorized the action. Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO will expire at the end of the trading day, or at such time as the quotes are confirmed by the exchange to be reliable again '' whichever occurs first. Exclusion of an exchange or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

[8] In February 2001, the Exchange received Commission approval to eliminate the Auto-Ex by-pass feature in certain circumstances. *See* Securities Exchange Act Release No. 44013 (February 28, 2001), 66 FR 13816 (March 7, 2001). Commentary .01 to Amex Rule 933 now provides for matching of the best bid or offer displayed by a competing market by allowing customer market and marketable limit orders to be automatically executed at that best bid or offer provided it is within the specified number of trading increments or ticks of the Amex's displayed bid or offer, and the order is within the established order size parameters. Thus, orders will no longer by-pass Auto-Ex when they can be automatically executed at the better bid or offer being disseminated by another options exchange.

[9] *See* File No. SR-Amex–2002–09, a proposed rule change pending before the Commission.

[10] As part of the implementation of the permanent Options Intermarket Linkage, a uniform trade-through rule has been proposed by the participating options exchanges and was filed by Amex with the Commission on August 8, 2001. *See* SR–Amex–2001–64.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–74 and should be submitted by May 6, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9057 Filed 4–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45704; File No. SR–NASD–2001–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rule 4720 Relating to the Inclusion of UTP Exchanges in the Nasdaq National Market Execution System

April 8, 2002.

I. Introduction

On October 5, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending NASD Rule 4720, SelectNet Service, relating to the inclusion of exchanges trading Nasdaq securities pursuant to unlisted trading privileges (''UTP Exchanges'') in the Nasdaq National Market Execution System (''NNMS''). On December 19, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.[3] On January 16, 2002, the NASD submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 28, 2002.[5] The Commission received two comments on the proposal.

II. Description of the Proposal

In SR–NASD–2001–69, Nasdaq is proposing to amend NASD Rule 4720 to specify that a UTP Exchange will be permitted access to SelectNet on a basis similar to that which is offered to NASD members. As a result, SelectNet will be available only in connection with participation in the NNMS (hereinafter referred to as ''SuperSOES''). Nasdaq believes that the rule change will bring UTP Exchanges into parity with Nasdaq market makers, as well as reduce the risk of dual liability for both Nasdaq market makers and UTP Exchanges participating in SuperSOES. Nasdaq believes that the rule would also limit the possibility of backing away from quotes by UTP Exchanges and would limit the instances of locked/crossed markets among market participants that participate in a Nasdaq execution system.

Nasdaq believes establishing SuperSOES as the primary platform for trading Nasdaq-listed securities is a critical step in improving the quality of its market. Nasdaq believes that implementation of SuperSOES has significantly improved the Nasdaq Stock Market. In particular, Nasdaq's initial assessment based on preliminary data shows that SuperSOES orders are processed quickly, enjoy high fill rates, and execute at the current market price. Moreover, according to Nasdaq, SuperSOES has not had a significant negative impact on spreads, depth or volatility. In addition, SuperSOES has been voluntarily adopted by the Chicago Stock Exchange, Inc. (''CHX'') and the Boston Stock Exchange, Inc., which currently represent the vast majority of the trading volume in Nasdaq-listed stocks by UTP Exchanges. CHX has participated in SuperSOES since it was implemented in July 2001.[6] As SuperSOES becomes a more familiar feature in the Nasdaq market place, Nasdaq believes it will benefit Nasdaq market participants and public investors by making the operation of Nasdaq more efficient.

According to Nasdaq, permitting UTP Exchanges to participate in Nasdaq without automatic execution functionality perpetuates the potential for ''dual liability'' that Nasdaq designed SuperSOES to eliminate. Nasdaq represents that the potential for dual liability exists when market participants, such as UTP Exchanges, send SelectNet liability messages to

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated December 18, 2001 (''Amendment No. 1''). In Amendment No. 1, the NASD removed language that was subsequently incorporated into a different NASD rule change. *See* Securities Exchange Act Release No. 45057 (November 8, 2001), 66 FR 57496 (November 15, 2001).

[4] *See* letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated January 16, 2002 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 45319 (January 18, 2002), 67 FR 3923.

[6] In July 2001, the Commission approved a rule change to permit UTP Exchanges to participate on a voluntary basis in SuperSOES. *See* Securities Exchange Act Release No. 44526 (July 6, 2001), 66 FR 36814 (July 13, 2001).

Nasdaq market makers that simultaneously receive executions through SuperSOES. Additionally, according to Nasdaq, permitting UTP Exchanges to access Nasdaq via SelectNet could disrupt and slow the market. To improve the trading environment for all of Nasdaq's market participants, and to avoid potential market disruptions, Nasdaq is proposing to require UTP Exchanges that choose to participate in Nasdaq to accept automatic executions through SuperSOES.

III. Summary of Comments

The Commission received two comment letters on the proposal: One from the Knight Trading Group, Inc. (''Knight''),[7] and one from the Philadelphia Stock Exchange, Inc. (''Phlx'').[8] In Knight's letter, Knight expresses general support for Nasdaq's proposal and agrees with the reasons set forth by Nasdaq as the basis for the proposed amendment.[9]

In the Phlx letter, the Phlx argues generally that the proposed rule change is an anti-competitive attempt to require UTP Exchanges to be subject to automatic execution in Nasdaq's NNMS. Phlx contends that such participation would have an adverse effect on the attractiveness of UTP Exchanges as alternative trading venues for Nasdaq securities.

Specifically, the Phlx believes that forcing UTP Exchanges to accept automatic executions will make it difficult for UTP Exchanges to attract Electronic Communication Networks (''ECNs'') as direct participants, impose per share trade execution fees on the UTP Exchanges for their orders executed through NNMS, and force the UTP Exchanges to relinquish any claim over inter-market trades executed through the NNMS (either as indications of the UTP Exchange's liquidity or to receive market data revenues).

The Phlx states that Nasdaq's justifications for the proposed rule change are without merit. The Phlx believes that imposing a short time window within which Nasdaq market makers would be required to respond could solve Nasdaq's dual liability concern. Furthermore, the Phlx states that Nasdaq has offered no empirical data to substantiate the claim that non-automatic execution participation by UTP Exchanges results in deleterious order queuing.

Finally, the Phlx asserts that requiring UTP Exchanges to participate in NNMS will funnel trading activity away from the UTP Exchanges, and, thus, remove the opportunity for price improvement, the hallmark of an auction market. The Phlx notes that requiring UTP Exchange participation in NNMS will expose UTP Exchange specialists to the same dual liability that Nasdaq currently seeks to avoid for its market makers. The Phlx proposes that an inter-market linkage plan for Nasdaq securities be developed, and, until such a plan is developed, the Phlx proposes that the status quo be maintained by allowing UTP Exchanges access to Nasdaq markets via SelectNet.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, [10] and, in particular, the requirements of Section 15A of the Act [11] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[12] Section 15A(b)(6) [13] requires, among other things, that the NASD's rules be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is not inconsistent with the objectives of this section of the Act. Specifically, requiring UTP Exchanges that choose to participate in the Nasdaq market also to participate in SuperSOES could help reduce the potential for order queuing and for system stoppages within the Nasdaq Stock Market, when a UTP Exchange's quote is alone at the best bid or best offer.

Moreover, the Commission notes that Nasdaq is not required to grant competitors access to Nasdaq's proprietary systems. To the extent Nasdaq chooses to grant access to its proprietary systems, Nasdaq may impose reasonable terms and conditions, such as requiring use of SuperSOES for access to SelectNet. Nasdaq may not impose terms and conditions that place an unfair burden on competition or impose terms and conditions that result in unfair discrimination. Finally, UTP Exchanges may choose to participate in SuperSOES on a voluntary basis; nothing in this rule change would require them to accept automatic executions from Nasdaq.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2001–69) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[7] *See* letter from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight, to Jonathan G. Katz, Secretary, Commission, dated February 21, 2002.

[8] *See* letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, to Jonathan G. Katz, Secretary, Commission, dated February 25, 2002.

[9] Knight incorporated by reference the comment letters it submitted in connection with the following releases: Securities Exchange Act Release Nos. 45182 (December 20, 2001), 66 FR 67609 (December 31, 2001); and 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001). The Commission notes that the comments incorporated by reference were addressed in the approval orders in the respective releases.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45702; File No. SR–NASD–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rules 6110 and 6120 Relating to UTP Exchange Usage of ACT

April 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4under,[2] notice is hereby given that on March 7, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rules 6110, Definitions, and 6120, Participation in ACT, regarding the Automated Confirmation Transaction System (''ACT''). The proposed rule change would permit Nasdaq to grant access to ACT to national securities exchanges that trade Nasdaq securities on an unlisted trading privileges basis (''UTP Exchanges'').[3]

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6110. Definitions

(a)–(o) No Change.

(p) The terms ''Participant,'' ''ACT Order Entry Firm,'' ''correspondent executing broker/dealer,'' ''correspondent executing broker,'' ''introducing broker/dealer,'' ''introducing broker,'' ''clearing broker/dealer,'' and ''clearing broker'' shall also include, where appropriate, the Non-Member Clearing Organizations *and UTP Exchanges* listed in Rule 6120(a)(5) *and (a)(6)* below and their qualifying members.

6120. Participation in ACT

(a) Mandatory Participation for Clearing Agency Members

(1)–(5) No Change.

(6) Upon compliance with the conditions specified in subparagraphs (A)–(E) below, access to and participation in ACT may be granted to a national securities exchange that trades Nasdaq National Market or SmallCap securities on an unlisted trading privileges basis (''UTP Exchange''). The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by a UTP Exchange ACT Participant Application Agreement. Such access may be made available on terms that differ from the terms applicable to members but that do not unreasonably discriminate among national securities exchanges.

(A) Execution of, and continuing compliance with, a UTP Exchange ACT Participant Application Agreement;

(B) Continuing compliance with UTP Exchange ACT Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission;

(C) Maintenance of the physical security of the equipment located on the premises of the UTP Exchange to prevent the unauthorized entry of information into ACT;

(D) Acceptance and settlement of each trade that ACT identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date; and

(E) A UTP Exchange shall not permit its members to have direct access to ACT without the express written consent of the Association.

[(6)] *(7)* Each ACT Participant shall be obligated to inform the Association of non-compliance with any of the participation requirements set forth above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD is proposing to offer UTP Exchanges the ability to participate in Nasdaq's proprietary trade reporting and comparison system, ACT, according to terms established by Nasdaq. Under this proposed rule filing, exchanges that choose to use Nasdaq's ACT system will sign a contract with Nasdaq setting forth the terms and conditions of usage of ACT, including available functionality and applicable rules and fees. UTP Exchange access to ACT may be made available on terms that differ from the terms applicable to NASD members[4] but that do not unreasonably discriminate among UTP Exchanges.

Background

During three decades of operation, Nasdaq has evolved into one of the largest, most liquid markets in the world and a powerful driver of the U.S. economy. As a market, Nasdaq builds and operates systems that enable its members to execute and report trades in Nasdaq-listed and over-the-counter securities, consistent with Section 15A of the Act. Among the systems that provide the core functionality of the Nasdaq market are its quotation display device, the Nasdaq Workstation II (''NWII''),[5] its execution systems—the Nasdaq National Market Execution System (''SuperSOES'') and SelectNet—and its trade reporting system, ACT. The NWII, SuperSOES, SelectNet, and ACT are examples of Nasdaq proprietary systems.

Nasdaq is also an exclusive securities information processor (''SIP'') under Section 11A of the Act. Pursuant to the Securities Act Amendments of 1975, Nasdaq negotiated and executed a national market system plan, the ''Nasdaq UTP Plan,'' for quoting and trading of Nasdaq National Market stocks by securities markets that chose to participate in the Nasdaq UTP Plan. As the SIP for the Nasdaq UTP Plan, Nasdaq operates facilities to collect, consolidate, and disseminate quotations and last sale reports of all markets quoting and trading Nasdaq-listed securities. The Plan-sponsored mechanism for entering quotations and last sale reports is a computer-to-computer interface commonly referred to as ''the UTP Line.''[6] The Plan does not grant participants access to Nasdaq's proprietary execution facilities, but simply requires that UTP Exchange specialists have access to and be accessible by Nasdaq members via the

[3] The NASD requested that the Commission make various technical corrections to the proposed rule language and delete an inaccurate reference to the Boston Stock Exchange, Inc. (''BSE'') in footnote 8. Telephone discussion between Katherine England, Assistant Director, Division of Market Regulation, SEC, and Jeffrey S. Davis, Associate General Counsel, Office of General Counsel, Nasdaq (April 5, 2002).

[4] Until Nasdaq registers as an exchange, all NASD member firms are members of The Nasdaq Stock Market, Inc., after which time, Nasdaq member firms are expected to be a subset to the NASD membership. For this filing, because Nasdaq is not yet an exchange, ''Nasdaq members'' are NASD members that participate in the Nasdaq Stock Market.

[5] As a market, Nasdaq offers two proprietary routes of entry into its proprietary systems: The Application Programming Interface (''API''), and the Computer-to-Computer Interface (''CTCI''). Both interfaces exist as part of Nasdaq's proprietary Enterprise Wide Network, a network provided through an extensive contract with MCI WorldCom. Both interfaces rely on a multiple T1 connection into Nasdaq's Unisys system for quote updates and Tandem system for SuperSOES, SelectNet, and ACT messages. All participants who depend on Nasdaq's API/CTCI interface are subject to SEC-approved pricing for those services provided over that interface.

[6] The UTP Interface is a TCP/IP connection into Nasdaq's Tandem mainframe. All quote messages are then passed to Nasdaq's Unisys mainframe for processing and dissemination. All trade messages are processed in the Tandem mainframe and disseminated out on the Nasdaq Trade Dissemination Service datafeed. In the coming months, the Nasdaq SIP is migrating all UTP quote and trade messages to a new Tandem environment.

telephone.[7] Thus, the SIP facilities are separate and distinct from Nasdaq's proprietary systems.

Nasdaq will continue to maintain a technological, financial, and regulatory distinction between its role as a market and its role as a SIP. As a SIP, Nasdaq is obligated to provide UTP Exchanges access only to the facilities enumerated in the Nasdaq UTP Plan, namely, the UTP Interface and the telephone. The UTP Interface allows other market centers to send Nasdaq quotes and trade reports for inclusion in the consolidated quote and trade dissemination systems that Nasdaq operates. As a market, Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, subject to SEC approval where necessary, Nasdaq is entitled to condition the manner in which it will voluntarily make its proprietary systems, including ACT, available to UTP Exchanges that choose to use them.[8] Whether acting as a SIP or a market, Nasdaq will act in a nondiscriminatory manner and will make best efforts to reach a contractual solution with each UTP Exchange that wishes to use the ACT system.

This proposed rule would enable Nasdaq to enter into contracts with UTP Exchanges that will govern the terms of use and applicable fees for the use of ACT by UTP Exchanges. Under the proposal, UTP Exchanges could use ACT services, but would pay a markup over the fees applicable to members' use of ACT. Although the BSE is, to date, the only UTP Exchange that has requested use of ACT to report and clear both Nasdaq system and non-Nasdaq system trades, it is foreseeable that other UTP Exchanges will seek use of ACT as well.

Nasdaq believes it is essential that all UTP Exchanges that use Nasdaq proprietary systems execute a contract defining the terms and conditions of such use, which may be different from the terms and conditions imposed on Nasdaq members.[9] For example, Nasdaq has asked the BSE, as a condition of using ACT, to sign an agreement that requires the BSE ''to take reasonable disciplinary actions against its members for violations of the Nasdaq Requirements, as if such were violations of its own rules.'' It is essential for preserving the integrity of Nasdaq's proprietary systems that those self-regulatory organizations that use those systems agree to ensure that their members (over which Nasdaq typically has no authority) use them in a manner that is consistent with Nasdaq's systems requirements. Similarly, Nasdaq will make ACT available to UTP Exchanges on the basis of contractually agreed charges for such use. Such charges may be different than the charges that Nasdaq members pay for ACT. Nasdaq participants have paid for the maintenance and development of Nasdaq services, such as ACT, over the course of more than two decades. Charging UTP Exchanges or other non-members a higher rate than members for these services reflects the fact that the Nasdaq members have already borne the costs to build and enhance the service over time. The fact that the charges are set through arms-length contract negotiations with UTP Exchanges and other non-members allows for the flexibility to address each particular situation and agree on an appropriate response.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[10] of the Act, which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The NASD believes that the proposed rule responds to the request of a UTP Exchange for access to trade reporting and comparison functionality to facilitate submission of transaction reports to the SIP for Nasdaq securities, and ultimately, for dissemination to the public. Moreover, the NASD believes that the proposed rule would permit Nasdaq to distinguish among Nasdaq members and non-members in order to promote behavior that benefits both the market structure that Nasdaq offers to investors and Nasdaq as a business. Such distinctions would be based upon the voluntary agreement of independent self-regulatory organizations that have equal standing to negotiate arms-length agreements. As the Commission has noted in the context of another self-regulatory organization's fees, the Act ''prohibits unfair discrimination,' not discrimination' simpliciter * * *.''[11]

The NASD further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[12] of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[13] of the Act and Rule 19b–4(f)(3) thereunder[14] as being concerned solely with the administration of the NASD. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[7] The SEC established this policy in its 1985 report, *Unlisted Trading Privileges in Over-the-Counter Securities*, Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (September 24, 1985), fn. 89 and accompanying text. The SEC rejected calls for a ''more sophisticated intermarket trading linkage'' similar to ITS/CAES, but urged the participants to develop suitable access mechanisms, such as the UTP Line that was later developed.

[8] Nasdaq has voluntarily permitted UTP Exchanges to participate in SuperSOES and has filed rules defining the manner in which those exchanges may use this system. In fact, Nasdaq is filing a rule proposal to make SuperSOES the exclusive Nasdaq proprietary execution system available for UTP Exchanges to quote and trade Nasdaq securities on Nasdaq.

[9] Nasdaq does not impose a monthly fee for access to the UTP Interface. The UTP Interface is installed and maintained by an independent vendor.

[10] 15 U.S.C. 78*o*3(b)(6)

[11] Exchange Act Release No. 37250 (May 29, 1996), 61 FR 28629 (June 6, 1996) (quoting *Timpinaro* v. *SEC,* 2 F.3d 453, 456 (D.C. Cir. 1993).

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–35 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8998 Filed 4–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45709; File No. SR–NASD–2001–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Electronic Filings With the Corporate Financing Department

April 9, 2002.

I. Introduction

On August 6, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending NASD Conduct Rule 2710 to require electronic filings. The proposed rule change was published for comment in the **Federal Register** on August 24, 2001.[3] NASD Regulation filed Amendment No. 1 to the proposed rule change on March 4, 2002.[4] The Commission received three comments on the proposal. This order approves the proposal and issues notice of, and grants accelerated approval to, Amendment No. 1.

II. Description of the Proposal

NASD Regulation is proposing to amend NASD Rule 2710(b)(6) to require members to file information required by subparagraph (b)(6) with the NASD Regulation's Corporate Financing Department (''Department'') through its electronic filing system, the Corporate Offerings Business Regulatory Analysis System (''COBRA'').[5] The obligation to file information electronically would apply to all offerings subject to the rule's filing requirements, regardless of whether the offering is exempt from registration with the SEC or is submitted confidentially to the SEC for review.

NASD Regulation also is proposing to adopt new subparagraph (b)(5)(B) of Rule 2710 to provide that all documents that are filed with the SEC through the EDGAR system will be treated as filed with the Association. Members that do not file documents with the SEC through EDGAR would remain obligated to continue to submit multiple copies of any required documents in paper format. However, NASD Regulation is proposing to amend NASD Rule 2710(b)(5)(A)(ii) and (iii) to reduce the number of required copies of these documents from five to three.

NASD Regulation has hosted several training sessions to provide opportunities for members and their counsel to learn how to file offerings using COBRA. In addition, NASD Regulation has stated that certain Department staff members are dedicated to assisting filers when they access and navigate the system. According to NASD Regulation, before and following Commission approval of the proposed rule change, the Department will provide additional training sessions and provide continuing support and assistance to members and their counsel who have questions and are unfamiliar with the system.

NASD Regulation has stated that the NASD will publish a Notice To Members within 30 days of Commission approval announcing the proposed rule change and providing an effective date within 60 days of Commission approval.

III. Summary of Comments and NASD Regulation's Response

The Commission received three comment letters on the proposed rule change.[6] The commenters concerns with the proposal, and NASD Regulations response to these concerns, are summarized below.

Increased Costs and Less Efficiency

The Commenters were concerned that the mandatory use of COBRA generally would be more costly and less efficient than the current process of manual filings. NASD Regulation does not believe that these concerns are justified.

NASD Regulation believes that mandatory COBRA filing will reduce overall costs and enhance the efficiency of the Department's operations in several important ways. Electronic filing eliminates the need for the Department to handle and process thousands of packages that otherwise would be sent through the U.S. Postal Service or other couriers. Additionally, direct electronic filing into COBRA eliminates the need for analysts to input data from paper filings into COBRA. Electronic filing also mitigates against the possibility that paper records will be lost, such as in the event of a catastrophe. Further, COBRA eliminates the need for members to file registration statements with the Department if they have been filed with the SEC using EDGAR. Filers simply need to provide the Department with the EDGAR accession number in the COBRA Basic Information. This feature reduces members' printing and delivery expenses. For these reasons, NASD Regulation believes that members can expect to receive a speedier review of their electronic filings under COBRA.

The NASD states that the Department has worked with the legal community and NASD members for over four years to ensure that COBRA is as user-friendly and efficient as possible. NASD has three staff members available to train

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44720 (August 17, 2001), 66 FR 44657.

[4] Letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 1, 2002 (''Amendment No. 1''). Amendment No. 1 responds to the concerns of commenters and makes a minor clarification to proposed Rule 2710(b)(6)(A)(vii).

[5] On April 30, 2001, the Department deployed a web-based application of COBRA, which consists of an internal software application used by the Department and ''Web COBRADesk,'' a user interface that permits members and their counsel to file offerings of direct participation program securities.

[6] Letter from Edward M. Alterman, Fried, Frank, Harris, Shriver & Jacobson (''Fried'') to Jonathan G. Katz, Secretary, Commission, dated September 24, 2001; Letter from Mark T. Lab, Simpson Thacher & Bartlett (''Simpson'') to Jonathan G. Katz, Secretary, Commission, dated October 1, 2001; and Letter from Martin R. Miller, Willkie Farr & Gallagher (''Wilkie'') to Jonathan G. Katz, Secretary, Commission, dated October 4, 2001 (collectively, the ''Commenters'').

members and their counsel on using the system and assist filers who are unfamiliar with the system with navigation and information reporting requirements. NASD Regulation upgraded the system to make it even more user-friendly and efficient. Most notably is the development of COBRADesk as a ''web-based'' interface. NASD Regulation is currently installing additional system upgrades that respond to users' comments on ways to improve the system. The Department and its vendor, Dealogic,[7] are committed to making system improvements that are necessary to address filer comments and technological advances.

Willkie stated that there would be no need to make COBRA mandatory if it really saved costs. According to NASD Regulation, Willkie is presumably implying that filers would voluntarily use COBRA if it were less costly than the current system. NASD Regulation, however, does not agree with this assertion. Paper filings slow the review process for all filers because the Department must maintain and dedicate resources to redundant and inefficient paper filing procedures. Consequently, many of the benefits of the electronic system will not be realized unless all filers use it.

Fried stated that the Commission's goal in requiring electronic filings with EDGAR is to make the filings publicly available more rapidly. By contrast, filings with the Department are confidential. Fried argued therefore, that there is no basis for the NASD to require electronic filings with the Department. NASD Regulation does not believe that electronic filings should only be mandated when the goal of the system is public dissemination. As noted in the notice of proposed rule change, there are many efficiencies in having all filings made with the Department electronically.

Information Required by the Electronic Filing System

All of the Commenters objected to proposed NASD Rule 2710(b)(6)(A)(vii), which would require a person filing information through COBRA to file ''any other information required by the Association's electronic filing system.'' NASD Regulation intended the provision to require all information required under NASD Rule 2710 to be filed exclusively through COBRA. NASD Regulation recognizes that, as drafted, the provision could be construed to allow the NASD to change the substance of what is required by Rule 2710 simply by making a program change to COBRA. To address this concern, NASD Regulation amended proposed Rule 2710 (b)(6)(A)(vii) to state ''any other information required to be filed under this Rule,'' to make clear that the electronic filing requirements are based upon the Rule and not the electronic filing interface.

Yes/No Boxes

The Commenters expressed concern with the feature in COBRA that they believe requires filers to answer ''yes'' or ''no'' to questions requiring compliance with various provisions of NASD Rules 2710, 2720, or 2810. For instance, Fried and Simpson noted that certain questions may not apply to the types of offerings that are filed with the Department (*e.g.*, a question about compliance with Rule 2810 when the offering does not involve direct participation program securities).

NASD Regulation states that the questions serve as reminders to filers as they complete a submission. The COBRA system does not require that these buttons be checked; they are merely intended to be useful reminders of various regulatory requirements for members. Similarly, questions that do not apply to offerings of the type being filed are included so that members can navigate to proper screens on the Web site. NASD Regulation has not received similar complaints from other firms that routinely make electronic filings and believes the yes/no boxes serve as useful reminders to many filers.

Security

The Commenters raised concerns regarding the security of information filed through COBRA. Fried and Simpson argued that no web-based system is entirely safe from unauthorized access and is at least as vulnerable as the United States Government's highest level of security. Willkie noted that it is nearly impossible to guarantee the security of information transmitted on the Internet.

NASD Regulation states that the COBRADesk system was designed by Dealogic and is internally maintained by Electronic Data Systems Corporation (''EDS''). The COBRADesk system is one of many web-based systems designed and built by Dealogic that routinely are used by the financial services industry.

Web COBRADesk security features include: (i) Multiple Web server and standby database server to provide scalability and redundancy; (ii) servers housed at a secure data center run by EDS; (iii) multiple layers of security including multiple firewalls; (iv) integrated industry-standard Kerberos security; (v) users and firms authenticated at Web and database level; and (vi) all sessions between users and Web server protected by 128-bit encryption. EDS applies patches, runs systems through multiple testing stages, and does penetration testing.

Further, while NASD Regulation recognizes that the security of information sent over the Internet is of critical importance, it notes that the information filed through COBRADesk tends to be less confidential and proprietary than other information members routinely send over the Internet, using systems that are designed by Dealogic. Moreover, over 200 members currently are sending or have sent information using COBRADesk,[8] and the security of that information has not raised any concerns, before the comment letters received in response to the proposed rule change.

Required Information

The Commenters also raised concerns regarding the provision that the system will not accept filings without certain specified information being provided, some of which typically is not known at the time of the initial filing with the SEC.[9] For instance, Fried stated that the system will not accept a filing for an equity offering without the actual number of shares and price per share, numbers that are rarely known at the time of the initial SEC filing. Fried and Willkie argued that filers will be forced to insert incomplete or unreliable information merely to make a filing within the time required. Fried argued that the practitioner submitting the filing is forced to invent numbers and qualify them with general language disclaiming the accuracy of that information. Willkie added that filers would be forced to include a disclaimer on COBRA that the information was merely a ''best guess'' to be able to comply with the timing requirements of Rule 2710. Fried stated that COBRA demands the stock symbol, the information on affiliations and associations between the issuer and the underwriters and related persons, the SEC accession number, and a detailed analysis of the terms of the underwriting documents. Fried argued that the only viable alternative to providing the required information would be to provide unreliable or estimated

[7] Dealogic (formerly CommScan, L.L.C.) is the third-party vendor that designed and developed (COBRADesk in June 1999 as a client application and as a Web application.

[8] Thrity percent of the filings the Departmetn received in 2001 were filed electronically.

[9] Pursueant to NASD Rule 2710(b)(4), the filing must be submitted to the Department no later than one business day after the filing of any such document with the SEC.

information and provide a disclaimer in the appropriate drop down box.

NASD Regulation received the same or similar comments in connection with the proposed amendments to NASD Rule 2710 that are pending at the SEC [10] and during other meetings with members and their counsel to discuss process improvements and opportunities to improve efficiency and fairness in the filing system. The proposed amendments to Rule 2710 include provisions that are intended to decrease the amount of information required to be filed with the NASD, where appropriate, particularly with regard to NASD association and affiliation. NASD Regulation notes, however, that electronic filing does not require any more or less information to be filed initially than the Department requires in connection with paper filings.

Specifically, COBRA will accept filings without certain information being provided. There are five required fields in the system: (i) The filer's e-mail address; [11] (ii) distribution method; [12] (iii) accession number; [13] (iv) compensation information; [14] and (v) the number and value of the securities proposed to be offered.[15] The stock symbol, the information regarding affiliation and association between the issuer and the underwriters and related persons, and a detailed analysis of the terms and arrangements of the underwriting agreements are not required fields.

NASD Regulation notes that even in paper-based filings, members are required to submit a good faith estimate of the number of shares and the price per share if they do not have definitive information. NASD Regulation recognizes that this information may change while an offering is marketed.

Browser

Fried stated that COBRA will not work when the filer uses Netscape Navigator, thereby forcing filers to use Internet Explorer. Simpson indicated that it had problems accessing the tutorial using Netscape, and it is concerned that only the most recent version of Internet Explorer works with COBRA.

According to NASD Regulation, the browser standards for accessing COBRA are Netscape Navigator 4.6 or greater and Microsoft Internet Explorer 5.0 or greater. Browser upgrades are available free of charge at their respective Web sites. An application designed for the Web must be supported by the current browsers to ensure maximum performance, reliability, flexibility, privacy, and security. COBRA's layout, screens, dialog boxes, scroll bars, list boxes, grids, and links conform to the latest browser versions. It is virtually impossible to develop a system for the Web using the latest Web technology that interfaces with all older browser versions.

NASD Regulation acknowledges that there are minor problems that complicate—but, in NASD's view, do not prevent—the use of Netscape Navigator when accessing the tutorial or Help screens. These areas will be corrected in the next maintenance release. The Department does not believe that these minimal technical requirements are costly or burdensome.

Corporate Financing Rule Amendments

Fried and Simpson questioned the practicability and legality of requiring a practitioner to certify compliance with proposed NASD rules that are pending at the SEC. Willkie recommended that this proposed rule change be postponed until such time as the SEC approves other proposed amendments relating to Rule 2710 (File No. SR–NASD–00–04).

Due to programming requirements and the time it would take to implement programming changes once the proposed amendments are adopted, when NASD Regulation ported COBRADesk to the Web in April 2001, NASD Regulation included data screens that can accept information regarding transactions that would meet one of the five exceptions proposed in the Rule amendments. COBRA, however, does not require certification of compliance with the proposed amendments, and it is within a filer's discretion whether to include information in the screens designed to capture information regarding transactions that meet the proposed exceptions.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act, [16] which requires that an Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[17]

Specifically, the Commission believes that the proposed rule change will greatly facilitate NASD Regulation's review of filings required by NASD Rule 2710. Moreover, the Commission does not believe that the proposal will place an undue burden on NASD members. The Commission notes that NASD Regulation has represented that three members of its staff will be available to train members and their counsel on using the system and assist filers who are unfamiliar with the system with navigation and information reporting requirements, which the Commission believes will minimize any burdens of the proposed rule change on NASD members. The Commission also notes that the provision of the proposal that eliminates the requirement to file paper copies of registration statements that have already been filed with the Commission through EDGAR should significantly reduce members' printing and delivery expenses related to corporate financing review by the Department. Finally, the Commission believes that NASD Regulation has adequately responded to the concerns of commenters.

The Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 responds to concerns of commenters and raises no new substantive issues. Accordingly, the Commission finds that good cause exists, consistent with sections 15A(b)(6) of the Act,[18] and 19(b)(2) of the Act [19] to accelerate approval of Amendment No. 1 to the proposed rule change.

[10] *See* Securities Exchange Act Release No. 42619 (April 4, 2000), 65 FR 19409 (April 11, 2000) (SR–NASD–00–04).

[11] The filer's e-mail address allows the Department to communicate with the filer.

[12] The information on distribution method is used to determine the amount of risk to be assumed by the participating members. The Department processes that information to calculate the maximum allowable compensation that a member may receive.

[13] The SEC accession number allows the staff a direct link to the documents through EDGAR.

[14] The Department reviews the amount of compensation paid to members in underwriting to ensure that the underwriting terms and arrangements in public offerings in which NASD members participate are fair and reasonable. To comply with this requirement, the Department must calculate the maximum allowable compensation a member may receive in connection with a public offering.

[15] Data on the price per share and the number of shares are needed to determine the offering proceeds, which are used to calculate the filing fee and compensation limits.

[16] 15 U.S.C 78*o*–3.

[17] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C 78*o*–3.

[19] 15 U.S.C. 78s(b)(2).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–46 and should be submitted by May 6, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2001–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9063 Filed 4–12–02; 8:45 am]

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[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45706; File No. SR–NYSE–2002–08]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Changes to Audit Trail Account Identification Codes

April 8, 2002.

On January 23, 2002, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change to introduce a new identification code/audit trail account type, ''Q,'' to indicate a proprietary trade by a member to cover the member's own error pursuant to Exchange Rule 134.

The proposed rule change was published for comment in the **Federal Register** on February 28, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes the addition of the identifier ''Q'' for proprietary trades to cover the member's own error should protect investors by identifying error transactions and enhancing the Exchange's ability to conduct automated surveillance of NYSE members' error trading.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NYSE–2002–08) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9062 Filed 4–12–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45462 (February 20, 2002), 67 FR 9341 (February 28, 2002).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45712; File No. SR–PCX–2001–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Its Auto-Ex System

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. PCX submitted Amendment No. 1 to the proposed rule change on April 9, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes rule changes that describe circumstances and Exchange procedures for disengaging the Exchange's Automatic Execution System for Options (''Auto-Ex'') and increasing or decreasing Auto-Ex order size. The proposed changes include a procedure for documenting circumstances in which Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rule changes also establish circumstances and procedures for declaring away markets unreliable. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed the following: (1) To add rule text and a purpose statement discussion specifying the circumstances necessary for declaring away markets unreliable and the procedures to be followed in making such declarations; (2) to delete language from the rule text and purpose statement that defines unusual market conditions as including ''other situations that create unusual trading conditions;'' (3) amend the definition of large influx of orders to include an extraordinarily large options order on the PCX in place of the prior language that referred to an extraordinarily large order on an options exchange; and (4) to delete language from the rule text and purpose statement that describes the underlying quote feed as unreliable when there is no response to orders to buy or sell the underlying stock, or when Market Makers are unable to manually update their quotes. See letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Deborah L. Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 8, 2002 (''Amendment No. 1'').

text of the proposed rule change follows. Proposed new language is italicized; proposed deletions are in brackets.

Rule 6.28

(a)–(b)—No change.

(c)(1)–(5)—No change.

(6) Suspend the Automatic Execution System (''Auto-Ex'') *pursuant to Rule 6.87(h)(3)(B).* [for a period of time not to exceed five minutes if, because of an influx of orders or unusual market conditions or circumstances, the Floor Officials determine that such action is appropriate in maintaining a fair and orderly market. Whenever such action is taken, Floor Officials or senior Exchange Staff must immediately notify a Floor Governor. Thereafter, the suspension of Auto-Ex may be ended, or may be continued for more than five minutes, based on a determination of two Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available), with a 2/3 majority prevailing.]

(7)—No change.

(8) The Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system *pursuant to Rule 6.87(h)(3)(C).* [to up to 50 contracts, to be effected on a case-by-case basis in a particular option issue, or for all option issues, when two floor officials and one Floor Governor deem such an increase to be appropriate. Pursuant to this Rule, the ability to execute order of up to 50 contracts will only occur during high volume or high volatility emergency situations. At all other times, the order size for Auto-Ex will remain to be the number of contracts permitted under Rule 6.87.]

* * *

Rule 6.87

(a)–(g)—No change.

(h) Suspension *and Unusual Use* of Auto-Ex.

(1) Floor-Wide POETS System Malfunction.—No change.

(2) Non-Floor-Wide POETS System Malfunction. If POETS is inoperable and Market Makers are physically unable to update their quotations in an issue or issues at the same trading post or trading quad, two Floor Officials may declare a ''fast market'' and direct the OBO to turn off the Auto-Ex system in the affected issue or issues. Once the system malfunction has been corrected, two Floor Officials may re-start Auto-ex. *If a POETS malfunction occurs but the Exchange is able to process and disseminate quotes accurately, two Floor Officials may decrease the guaranteed Auto-Ex size in one or more option issues pursuant to the procedures set forth in subsection (h)(3)(B).*

(3) Other Unusual Conditions.

(A) Unusual Market Conditions. The unusual market conditions that may permit increasing or decreasing the size of orders that may be automatically executed over the Auto-Ex or suspending Auto-Ex pursuant to subsections (B) and (C) are caused by news announcements (e.g. announcements relating to earnings speculation, economic news, reports of mergers or takeovers, disasters, etc.). Unusual market conditions that would permit unusual use of Auto-Ex under this Rule include:

(i) High Volatility. High volatility occurs generally when a stock or the entire market is experiencing rapid and extreme price fluctuations usually accompanied by doublewide spreads.

(ii) Large Influx of Orders. A large influx of orders occurs when volume is two or more times the average daily volume in an issue. It may also occur when an extraordinarily large options order is executed on the PCX and reported.

(iii) Unreliable Quote Feed. The underlying quote feed is unreliable when the Exchange is unable to accurately collect, process and/or disseminate quotation data.

(B) Suspension of Auto-Ex. If there are other unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex [in accordance with Rule 6.82(b).] for a period of time not to exceed five minutes if, because of unusual market conditions or circumstances, the Floor Officials determine that such action is appropriate in maintaining a fair and orderly market. Whenever such action is taken, Floor Officials or senior Exchange Staff must immediately notify a Floor Governor. Thereafter, the suspension of Auto-Ex may be ended, or may be continued for more than five minutes, based on a determination of two Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available), with a 2/3 majority prevailing.

(C) Unusual use of Auto Ex. Two Floor Officials may increase the size of orders that may be automatically executed over the Auto-Ex system up to 100 contracts or decrease the size of orders eligible for automatic execution in one or more option issues when they believe that unusual market conditions exist, provided that the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, two Floor Officials must review the situation again and make an independent decision of whether to increase or decrease the Auto-Ex eligible order size for that subsequent day. Any decisions made by two Floor Officials to increase or decrease the Auto-Ex eligible order size for a particular option issue for two or more consecutive days will be reviewed by the Options Floor Trading Committee at its next regularly scheduled meeting. Whenever two Floor Officials decrease the size of orders eligible for automatic execution, the lowest number of contracts that may be established is five.

(D) Any suspension or unusual use of Auto-Ex must be documented pursuant to Rule 6.87(n).

(4) Declaring Away Markets Unreliable. When a Floor Official determines that quotes from one or more particular markets in one or more options series are not reliable, the Floor Official may direct the senior person in charge of the Exchange's control room to exclude the unreliable quotes from the Auto-Ex determination of the NBBO in the particular options series.

(A) Determining Unreliability. A Floor Official may determine that quotes in one or more particular options classes in a market are not reliable only under the following circumstances:

(i) A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or

(ii) A market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes.

(B) Procedures to Follow. If one of the factors set forth in subsection (4)(A) occurs, then the following procedures must be followed.

(i) First, an LMM contacts an Order Book Official (''OBO'') and requests that the away market be declared unreliable.

(ii) Second, the OBO contacts the control room and requests [a declaration] that the control room confirm with the away market that it is unreliable pursuant to subsection (4)(A).

(iii) Third, if the control room has confirmed that an away market is unreliable, then the OBO will contact a Floor Official and request a declaration that the away market is unreliable.

(iv) Fourth, the Floor Official reviews and verifies the circumstances and determines whether away market should be declared unreliable. The OBO notifies the control room that the away market is unreliable and should be removed from the NBBO calculation.

(v) Fifth, the Floor Surveillance Unit (''FSU'') contacts the away exchange, and notifies the away market that one or more of its quotes have been removed from the NBBO calculation.

(vi) Sixth, the Floor Official will continue to monitor the away market that has been declared unreliable and notify the control room to return to firm mode when appropriate.

(C) Documentation Required. The following documentation is required when an away market is declared unreliable.

(i) The OBO must log the issues(s) and time of the LMM's request for a declaration that the away market was unreliable.

(ii) The OBO must prepare an Unusual Activity Report (''UAR'') documenting the facts giving rise to the LMM's request, the date, time, and duration of the exclusion and the reasons for placing the away market back into the NBBO calculation.

(iii) The Floor Official must sign the UAR.

(iv) The control room will maintain a log of the time the away market was taken out of the NBBO calculation and the time that the away market was placed back into the NBBO calculation.

(D) Duration of the Declaration. Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to subsections (4)(B)(i) or (ii) will expire at the end of the trading day, or at the time that the quotes are confirmed by the market to be reliable again, whichever occurs first. Exclusion of a market or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.(i)–(m)—No change.

(n) Documentation of Auto-Ex Use. The Exchange will document any action taken to suspend Auto-Ex, increase or decrease the size of Auto-Ex eligible orders or to operate Auto-Ex in a manner other than the usual manner with an Unusual Activity Report (UAR). The UAR will be signed by two Floor Officials and will state the system problem or market activity that led to the Floor Officials' ruling. The UAR information will be recorded in the Floor Surveillance log, which will document the option issues affected by the action, the time the action was taken, the Exchange officials who undertook the action, and the reasons why the action was taken.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule changes describe circumstances and Exchange procedures for disengaging the Exchange's Auto-Ex and increasing or decreasing Auto-Ex order size. The proposed changes include a procedure for documenting circumstances in which Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rule changes also establish circumstances and procedures for declaring away markets unreliable.

Background

The Pacific Options Exchange Trading System (''POETS'') is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system, an on-line limit order book system and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface (''MFI''). Market and marketable limit orders that are sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements designated by the Exchange. Orders executed on Auto-Ex receive the PCX's disseminated market price or better. Auto-Ex may be set to provide automatic price improvement when the national best bid or offer (''NBBO'') is better than the PCX best bid or offer (''BBO'') by one trading increment. In addition, Auto-Ex may be set to execute inbound orders at the NBBO price regardless of whether it is only one trading increment better than the PCX BBO, *i.e.*, orders may be executed at prices that may be multiple trading increments better than the then prevailing PCX BBO. Furthermore, Auto-Ex may be set to execute at improved prices regardless of whether the NBBO is locked or crossed. Auto-Ex prevents inbound orders from being executed at prices inferior to the NBBO. The PCX designates the eligible order size—which may be between 20 and 100 option contracts—on an issue-by-issue basis.

Summary

Pursuant to a Commission order, the PCX is required to adopt rules that specify the circumstances under which the Auto-Ex system may be disengaged or operated in any manner other than the normal manner set forth in the Exchange's rules.[4] The order also requires documentation of reasons for each decision to disengage Auto-Ex or to operate Auto-Ex in any manner other than the normal manner.

The Exchange proposes to modify PCX's Automatic Execution System Rule (Rule 6.87) to include provisions regarding disengaging Auto-Ex and increasing or decreasing the Auto-Ex eligible order size. The proposed changes also include a procedure for documenting circumstances when Auto-Ex is disengaged or the eligible order size is increased or decreased. The proposed rules specify the unusual market conditions that will justify an increase or decrease of the established Auto-Ex size or a suspension of Auto-Ex. The proposed rules codify the procedures that must be followed in the event the eligible order sizes are increased or decreased or Auto-Ex is suspended. Additionally, the proposed rules require documentation in the event that Auto-Ex order sizes are increased or decreased or that Auto-Ex is suspended.[5]

Unusual Market Conditions

Proposed Rule 6.87(h)(3)(A) provides a definition of unusual market conditions that may permit suspending Auto-Ex or increasing or decreasing the size of orders that may be automatically executed over the Auto-Ex. Such unusual market conditions may be caused by news announcements (*e.g.*, announcements relating to earnings speculation, economic news, reports of mergers or takeovers, disasters, etc.). Unusual market conditions that would permit unusual use of Auto-Ex under this Rule include the following:

(a) *High Volatility*. High volatility occurs generally when a stock or the

[4] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) (Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Section IV.h(i)(bb)).

[5] PCX represents that the proposed rule concerning documentation of operation of Auto-Ex in a manner other than usual is similar to CBOE Rule 6.8, Interpretations and Policies .08.

entire market is experiencing rapid and extreme price fluctuations usually accompanied by doublewide spreads.

(b) *Large Influx of Orders.* A large influx of orders occurs when volume is two or more times the average daily volume in an issue. It may also occur when an extraordinarily large options order is executed on the PCX and reported.

(c) *Unreliable Quote Feed.* The underlying quote feed is unreliable when the Exchange is unable to accurately collect, process and/or disseminate quotation data.

Suspending Auto-Ex

The Exchange's current Rules 6.87(h)(1) and (2) permit suspension of Auto-Ex in the event of Floor-Wide and Non-Floor Wide POETS System Malfunction. Current PCX Rule 6.87(h)(3) permits the suspension of Auto-Ex in other unusual situations not involving POETS malfunction. For consistency and clarity, the Exchange proposes to move current Rule 6.28(c)(6) concerning suspension of Auto-Ex and place it in Rule 6.87(h)(3)(B). The rule has been renumbered but the text is unchanged. It provides that if there are unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex for a period of time not to exceed five minutes if, because of unusual market conditions or circumstances, the Floor Officials determine that such action is appropriate in maintaining a fair and orderly market. Whenever such action is taken, Floor Officials or senior Exchange Staff must immediately notify a Floor Governor. Thereafter, the suspension of Auto-Ex may be ended, or may be continued for more than five minutes, based on a determination of two Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available).

Increasing or Decreasing Auto-Ex Size

For consistency and clarity, the Exchange proposes to move and revise current Rule 6.28(c)(8) (concerning the procedure for increasing the permissible size of orders that may be automatically executed over Auto-Ex up to 100 contracts) and place it in Rule 6.87(h)(3)(C). Proposed Rule 6.87(h)(3)(C) also addresses the procedure for decreasing the size of orders that may be automatically executed over Auto-Ex. The proposed procedure provides that two Floor Officials may: (1) Increase the size of orders that may be automatically executed over the Auto-Ex system up to 100 contracts; or (2) decrease the size of orders eligible for automatic execution. Such an increase or decrease may be approved by two Floor Officials in one or more option issues when they believe that unusual market conditions exist, provided that the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, two Floor Officials must review the situation again and make an independent decision of whether to increase or decrease the Auto-Ex eligible order size for that subsequent day. Any decisions made by two Floor Officials to increase or decrease the Auto-Ex eligible order size for a particular option issue for two or more consecutive days will be reviewed by the Options Floor Trading Committee at its next regularly scheduled meeting. Whenever two Floor Officials decrease the size of orders eligible for automatic execution, the lowest number of contracts that may be established is five.

Additionally, the Exchange proposes to amend Rule 6.87(h)(2) to provide for decreasing the guaranteed Auto-Ex size in one or more option issues when a non floor-wide POETS malfunction occurs but the Exchange is able to process and disseminate quotes accurately. In such circumstances, two Floor Officials may decrease the guaranteed Auto-Ex size in one or more option issues pursuant to the procedures set forth in Rule 6.87(h)(3)(C).

Declaring Away Markets Unreliable

A Floor Official may determine that quotes in one or more particular options classes in a market are not reliable only when: (1) A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or (2) a market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes.

If one or more of these factors occurs, then the following procedures must be followed. First, an LMM contacts an Order Book Official (''OBO'') and requests that the away market be declared unreliable. Second, the OBO contacts the control room and requests a declaration that the away market is unreliable. Third, if the control room has confirmed that an away market is unreliable, then the OBO will contact a Floor Official and request a declaration that the away market is unreliable. Fourth, the Floor Official reviews and verifies the circumstances and determines whether away market should be declared unreliable. The OBO notifies the control room that the away market is unreliable and should be removed from the NBBO calculation. Fifth, the Floor Surveillance Unit contacts the away exchange, and notifies the away market that one or more of its quotes have been removed from the NBBO calculation. Sixth, the Floor Official will continue to monitor the away market that has been declared unreliable and notify the control room to return to firm mode when appropriate.

The following documentation is required when an away market is declared unreliable: (1) The OBO must log the issues(s) and time of the LMM's request for a declaration that the away market was unreliable; (2) the OBO must prepare an Unusual Activity Report (''UAR'') documenting the facts giving rise to the LMM's request, the date, time, and duration of the exclusion and the reasons for placing the away market back into the NBBO calculation; (3) the Floor Official must sign the UAR; and (4) the control room will maintain a log of the time the away market was taken out of the NBBO calculation and the time that the away market was placed back into the NBBO calculation.

Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to the proposed rule will expire at the end of the trading day, or at the time that the quotes are confirmed by the market to be reliable again, whichever occurs first. Exclusion of a market or its quotes from the Auto-Ex determination of the NBBO will be reported to Exchange member firms.

Documentation

Under the proposed rules, the Exchange will document any action taken to suspend Auto-Ex, increase or decrease the size of Auto-Ex eligible orders or to operate Auto-Ex in a manner other than the usual manner with an Unusual Activity Report (''UAR''). The UAR must be signed by two Floor Officials and must state the system problem or market activity that led to the Floor Officials' ruling. The UAR information will be recorded in the Floor Surveillance log, which will document the option issues affected by the action, the time the action was taken, the Exchange officials who undertook the action, and the reasons why the action was taken.

2. Statutory Basis

The Exchange believes that the proposed rule changes, as amended, are

consistent with section 6(b) of the Act,[6] in general, and further the objectives of Section 6(b)(5),[7] in particular, because they are designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–13 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9061 Filed 4–12–02; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45714; File No. SR–Phlx–00–93]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 4, 5, 6 and 7 to That Portion of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Not Granted Accelerated Approval Relating to Providing Automatic Executions for Public Customer Orders at the NBBO

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2002, March 1, 2002, March 8, 2002, and April 3, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment Nos. 4,[3] 5,[4] 6,[5] and 7,[6] respectively, to that portion of the proposed rule change not previously granted accelerated approval, as described in Items I, II, and III below, which Items have been prepared by the Phlx.[7] The proposed rule change and Amendment Nos. 1 and 2 thereto were granted partial accelerated approval and were originally published for comment in the **Federal Register** on December 14, 2000.[8] On September 18, 2001, the Phlx filed Amendment No. 3 to the proposed rule change.[9] The Commission is publishing this notice to solicit comments on Amendment Nos. 4, 5, 6, and 7 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 15, 2002 (''Amendment No. 4''). In Amendment No. 4, the Exchange proposes to revise its proposed procedures for determining when quotes from away markets are excludable from the calculation of the National Best Bid or Offer (''NBBO''). Amendment No. 4 supersedes and replaces Amendment No. 3 in its entirety.

[4] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission dated February 28, 2002 (''Amendment No. 5''). In Amendment No. 5, the Exchange: (1) Clarified that the Exchange may determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate; (2) represented that it maintains, on a daily basis, records of each instance in which it determines to exclude quotes from another exchange from the Exchange's calculation of the NBBO on a daily basis; and (3) stated that it will notify other exchanges of the determination to exclude its quotes from the Exchange's calculation of the NBBO and of any determination to re-include such exchange's quotes in the Exchange's calculation of the NBBO.

[5] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 (''Amendment No. 6''). In Amendment No. 6, the Exchange proposed to amend the rule text to require the Exchange to maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded.

[6] *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2002 (''Amendment No. 7''). In Amendment No. 7, the Exchange proposed to amend the rule text to provide that documentation of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit.

[7] At the request of the Phlx, these sections have been revised to conform to subsequent amendments. Telephone conversation among Deborah Flynn, Assistant Director, Division, Commission, Jennifer Lewis, Attorney, Division, Commission, and Richard S. Rudolph, Counsel, Phlx, on February 21, 2002.

[8] *See* Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 (''Original Filing'').

[9] *See* letter from Richard S. Rudolph, Counsel, Phlx to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 18, 2001 (''Amendment No. 3'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to ensure that customer orders would not be disqualified from receiving an automatic execution due to another market's dissemination of unreliable quotes. In the Original Filing, the Phlx proposed to permit the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) to rely on a variety of factors to determine that if quotes in certain automatic step-up options on the Exchange or other markets were deemed not to be reliable, such unreliable quotes would be excluded from the calculation of NBBO, and customers would receive an automatic execution at NBBO based on the remaining markets whose quotes were not deemed to be unreliable. The Phlx proposes to limit the factors that the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), may rely upon to determine that quotes in options on the Exchange or another market or markets are unreliable.[10]

The text of the proposed rule change, as modified by Amendment Nos. 4, 5, 6, and 7, is provided below. Text that has been added to the current Exchange rule is in italics.

Rule 1080 Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)–(b) No change.

(c) No change.

(i) (A)–(C) No change.

(D) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the ''Quote Rule''), customer market orders will receive an automatic execution at NBBO based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement set forth in the Quote Rule. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (''OPRA''); quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO. The Exchange may determine to exclude quotes from its calculation of NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Such documentation shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(E) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from the Option Price Reporting Authority (''OPRA''); and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

(d)–(j) No change.

Commentary: No change.

[10] *See* Amendment No. 4, *Supra* note 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change.[11] The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[12]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the Original Filing, the Phlx proposed an enhancement to AUTO–X, the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'') System, that would allow AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined ''step-up parameter.''[13] The Commission granted accelerated approval to this part of the Original Filing.

In addition, in the Original Filing, the Phlx proposed to permit the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) to determine that if quotes in certain automatic step-up options on the Exchange or other markets were deemed not to be reliable, such unreliable quotes would be excluded from the calculation of NBBO, and customers would receive an automatic execution at NBBO based on the remaining markets whose quotes were not deemed to be unreliable. The original filing proposed that quotes would be determined to be unreliable due to Exchange communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Options Price Reporting Authority (''OPRA'') which would likely render such quotes stale; or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

[11] *See* Original Filing, *supra note 8.*

[12] *Id.*

[13] For a full discussion of Phlx's proposa, see the Original Filing.

The Phlx now proposes to limit the factors that the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), may rely upon to determine that quotes in options on the Exchange or another market or markets are unreliable.[14] Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (''OPRA''); quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.[15]

In addition, AUTOM customers would be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO.

Further, where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that responsible brokers or dealers on the Exchange or another market or markets previously relieved of their obligations under the Commission's Quote Rule [16] are no longer subject to such relief, the quotations of such responsible broker or dealer would be included in the calculation of the NBBO for such options. Such determination would be permitted to be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm.

AUTOM customers would be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.[17]

The Exchange also would be permitted to determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or to determine to exclude all options quotes from an exchange, where appropriate.[18]

The Phlx also proposes to require the Exchange to maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded.[19]

In addition, Phlx proposes to amend the rule text to provide that documentation of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.[20]

2. Statutory Basis

The Phlx believes that the proposed rule change, as amended, is consistent section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5),[22] in particular, because it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by enhancing the Exchange's ability to provide automatic execution of public customers' orders at the best available prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the proposed rule change.[23] In its comment letter, CBOE recommended that the Phlx amend its rule to require the Exchange to make and keep a written record of decisions to remove an exchange from the NBBO calculation and to notify an exchange when its markets have been removed from the Phlx's NBBO calculation. In response to CBOE's comments, Phlx proposed Amendment Nos. 5 and 6.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will: (A) by order approve the proposed rule change, as amended, or (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 4, 5, 6, and 7, including whether Amendment Nos. 4, 5, 6, and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File Number SR–Phlx–00–93 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9058 Filed 4–12–02; 8:45 am]

BILLING CODE 8010–01–P

[14] *See* Amendment No. 4, *supra* note 3.

[15] *Id.*

[16] Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[17] For a full discussion of Phlx's proposal, see the Original Filing.

[18] *See* Amendment No. 5, *supra* note 4.

[19] *See* Amendment No. 6, *supra* note 5.

[20] *See* Amendment No. 7, *supra* note 6.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *See* letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc. (''CBOE''), to Mr. Jonathan G. Katz, Secretary, Commission, dated February 8, 2001.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45713; File No. SR–Phlx–2001–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 2, 3, 4, and 5 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Providing Automatic Executions for Public Customer Orders When Another Market Is Disseminating Quotes Deemed Not To Be Reliable

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''Exchange'') the proposed rule change as described in Items I, II, and III below,[3] which Items have been prepared by the Exchange. Phlx submitted Amendment Nos. 1, 2, 3, 4, and 5 to the proposed rule change on September 19, 2001,[4] January 11, 2002,[5] March 1, 2002,[6] March 8, 2002,[7] and April 3, 2002,[8] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment Nos. 2, 3, 4, and 5, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[9] to provide that, in situations in which the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets are deemed not to be reliable, such quotes would be excluded from the calculation of the NBBO for purposes of AUTO–X, and eligible customer orders may be executed automatically if the Phlx quote is the NBBO, based on the remaining markets whose quotes are not deemed to be unreliable. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (''OPRA''); quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.

The text of the proposed rule change, as amended by Amendment Nos. 2, 3, 4, and 5, follows. New text is italicized.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)–(b) No change.

(c) (i)–(ii) No change.

(iii)–(iv) RESERVED.

(v)(A) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the ''Quote Rule''), customer market orders will receive an automatic execution at NBBO based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement set forth in the Quote Rule. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (''OPRA''); quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO. The Exchange may determine to exclude quotes from its calculation of NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of the Phlx, these Sections have been revised to conform to the substance of Amendment Nos. 2, 3, 4, and 5. Telephone call among Deborah Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, Jennifer Lewis, Attorney, Division, Commission, and Richard S. Rudolph, Counsel, Phlx, on February 21, 2001.

[4] In Amendment No. 1, the Exchange proposed to amend the rule text to provide that customer market orders will receive an automatic execution at the national best bid or offer (''NBBO'') based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 18, 2001 (''Amendment No. 1'').

[5] In Amendment No. 2, the Exchange proposed to amend the rule text to describe how the Exchange would determine that quotes in options on the Exchange or another market or markets should be excluded from the Exchange's calculation of the national best bid or offer (''NBBO''). *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 11, 2002 (''Amendment No. 2''). Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.

[6] In Amendment No. 3, the Exchange: (1) clarified that the Exchange may determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate; (2) represented that it maintains, on a daily basis, records of each instance in which it determines to exclude quotes from another exchange from the Exchange's calculation of the NBBO; and (3) stated that it will notify other exchanges of the determination to exclude its quotes from the Exchange's calculation of the NBBO and of any determination to re-include such exchange's quotes in the Exchange's calculation of the NBBO. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 (''Amendment No. 3'').

[7] In Amendment No. 4, the Exchange proposed to amend the rule text to require the Exchange to maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 (''Amendment No. 4'').

[8] In Amendment No. 5, the Exchange proposed to amend the rule text to provide the documentation of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quote were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2002 (''Amendment No. 5'').

[9] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

appropriate. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Such documentation shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(B) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from the Option Price Reporting Authority (''OPRA''); and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

(d)–(j) No change.

Commentary: No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to exclude from the calculation of NBBO (for purposes other than the NBBO Feature as described in footnote 10, *infra*) certain quotes from other markets that are deemed not to be reliable.[10] The consequence of this change would be that customer market orders and marketable limit orders received via AUTOM that were otherwise eligible for automatic execution may receive an automatic execution based upon reliable quotes, rather than a manual execution, provided that the Phlx quote is the NBBO.

Under current Exchange rules, orders for equity options received via AUTOM that would otherwise be eligible for automatic execution via AUTO–X are nonetheless executed manually where the specialist's bid or offer is inferior to the current best bid or offer in another market by any amount.[11] Therefore, if another market is disseminating the NBBO, AUTO–X will not permit the automatic execution of an otherwise eligible order *even if such other market's disseminated quote is unreliable.* Phlx believes this unreasonably and unfairly deprives customers who send their eligible orders to the Exchange via AUTOM expecting to receive an automatic execution (where the Phlx disseminated quote is the NBBO) of the benefits of such an execution. Moreover, Phlx believes this creates the risk that operational or other failures at another market will result in the Exchange potentially being flooded with orders that will have to be manually processed—thereby increasing the potential for errors, missed executions, and other adverse consequences, as more fully described below.

The Exchange believes that the customer and the marketplace are better served by permitting the Exchange (subject to adherence to carefully defined standards and procedures) to ''filter'' out unreliable quotes of other markets so as to permit the AUTO–X feature to continue to execute otherwise eligible orders where the Exchange's quote is the ''true'' NBBO (*i.e.,* the NBBO determined after excluding the unreliable quotes).

a. Unreliable Quotes

As stated above, where the NBBO Feature (as described in footnote 10, *supra)* is not engaged, in circumstances in which the Phlx specialist's best bid or offer in a series is inferior to the current best bid or offer in another market by any amount, orders for such series that would otherwise be eligible for automatic execution are executed manually. Currently, this is true even when the quotes disseminated by the exchange with the superior bid or offer are not reliable.

A quote could be deemed not to be reliable because of notification from another market that its quotes are not firm or are unreliable; administrative message from OPRA; quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.

b. Consequences of Manual Execution

The Exchange has sought to ensure that customer orders would not be disqualified from receiving an automatic execution due to another market's dissemination of unreliable quotes. The Exchange believes that manual execution of customer market orders in the circumstances described above deprives customers of automatic executions to which they should be entitled. The Exchange believes it would be unfair to deprive all eligible customer orders of automatic executions where the Phlx quote would be the NBBO but for the away market's unreliable quote, simply because another exchange is disseminating unreliable quotes that cause orders otherwise eligible for AUTO–X to be handled manually.

The Exchange believes if it determines that such quotes are unreliable, such quotes should be filtered from AUTOM in the calculation of NBBO for purposes of determining AUTO–X eligibility, and the customer's order should be executed automatically based on the Exchange's quote and quotes from other exchanges that are not deemed to be unreliable.

c. Procedures and Conditions for Determining Unreliable Quotes

Proposed Rule 1080(c)(v)(A) authorizes the Chairman of the Options

[10] Under current Exchange rules, certain AUTO–X eligible orders may be automatically executed at the NBBO disseminated by another options exchange, provided that the NBBO is not better than the specialist's best bid/offer by a predetermined ''step-up parameter.'' The enhancement is known as the ''NBBO Feature.'' The NBBO Feature would execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature, called ''automatic step-up options.'' *See* Exchange Rule 1080(c)(i).

[11] *See* Exchange Rule 1080(c)(i)(C)(3).

Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) to determine that quotes in specified options or series of options or in respect of specified markets are not reliable under the specific circumstances set forth in the proposed rule.

This authority would be expected to be exercised upon the request of the specialist, and only upon notification from another market that its quotes are not firm or are unreliable; receipt of administrative message from OPRA; receipt of quotes from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm.

As stated above, the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) would be authorized, under the circumstances set forth above, to determine when quotes from another market may be deemed unreliable. Such designee would be required to be a member of the Options Committee.

The Exchange would be permitted to determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or issue-by-issue basis, or would be permitted to determine to exclude all options quotes from an exchange, where appropriate.[12]

Phlx also proposes to amend the rule text to require the Exchange to maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of the NBBO, and to notify such other exchange that its quotes have been so excluded.[13]

In addition, Phlx proposes to amend the rule text to provide that documentation of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.[14]

d. Re-Inclusion of Quotes in Calculation of NBBO

Proposed Rule 1080(c)(v)(B) authorizes the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), to determine that quotes in options on the Exchange or other markets previously deemed not to be reliable pursuant to proposed Rule 1080(c)(v)(A) are again reliable, such quotations would again be included in the calculation of NBBO for such options.

Such determination would be permitted to be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers would be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[16] in general, and with section 6(b)(5),[17] in particular, because it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by allowing customer market orders to be executed automatically when another market is disseminating unreliable quotes that would otherwise cause such orders to be executed manually.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–35 and should be submitted by May 6, 2002.

[12] *See* Amendment No. 3, supra note 6.

[13] *See* Amendment No. 4, supra note 7.

[14] *See* Amendment No. 5, supra note 8.

[15] The Exchange notes that it has filed an amendment to a proposed rule change that proposes to institute a similar ''filtering'' feature for unreliable away-market quotes in relation to the NBBO Feature. For reasons similar to those specified in this filing, the Exchange has proposed to filter our unreliable quotes of other markets when calculating the NBBO so as to permit automatic executions at the ''true'' NBBO (*i.e.*, excluding the unreliable quotes), where the criteria of the NBBO Feature are met, rather than handling those orders manually. The Exchange proposes that the circumstances and procedures under which filtering may occur for purposes of the instant filing would be identical to those requested to apply to the NBBO Feature. *See* Securities Exchange Act Release No. 45714 (April 9, 2002) (SR–Phlx–00–93).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45710; File No. SR–Phlx–2001–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Disengagement of Auto-Ex Due to Extraordinary Circumstances

April 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Phlx submitted Amendment No. 1 to the proposed rule change on March 28, 2001.[3] Phlx submitted Amendment No. 2 to the proposed rule change on December 20, 2001.[4] Phlx submitted Amendment Nos. 3 and 4 to the proposed rule change on March 1, 2002,[5] and March 8, 2002,[6] respectively. The Commission's is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options Floor Procedure Advice (''OFPA'') A–13, Auto Execution Engagement/Disengagement Responsibility, and Phlx Rule 1080(e), Extraordinary Circumstances, to provide for a re-evaluation of the disengagement of AUTO–X[7] during extraordinary circumstances. Specifically, when AUTO–X is disengaged due to extraordinary circumstances, the Exchange would be required to review and confirm that such circumstances still exist five minutes after the initial declaration of extraordinary circumstances, and every fifteen minutes thereafter. Additionally, the Exchange proposes to amend Phlx Rule 1080(e) to specify the definition of extraordinary circumstances under which AUTO–X may be disengaged,[8] or operated in a manner other than the normal manner set forth in the Exchange's rules.[9] The Exchange is also proposing record keeping requirements to be kept when AUTO–X is disengaged and reengaged. The text of the proposed rule change, as amended, follows. New text is italicized; deletions are in brackets.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)–(b) No change.

(c) AUTO–X—AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series *provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder.* Currently, orders up to 100 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to

[18] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 20.19b–4.

[3] In Amendment No. 1, the Exchange requested accelerated effectiveness and deleted the following sentence from footnote 4: ''The Exchange also notes that extraordinary circumstances are ''unusual market conditions'' for purposes of Rule 11Ac1–1 under the Act.'' *See* letter from Diana Tenenbaum, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 27, 2001 (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange withdrew File No. SR–Phlx–2001–17 and proposed to define the extraordinary circumstances that would result in the disengagement of the Exchange's Automatic Execution System (''AUTO–X'') and to set forth procedures to be followed when AUTO–X is disengaged due to extraordinary circumstances. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 19, 2001 (''Amendment No. 2''). Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.

[5] In Amendment No. 3, the Exchange: (1) Proposed conforming amendments to Option Floor Procedure Advice A–13; (2) proposed an amendment to Exchange Rule 1080(c) to provide that the Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series, provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Commission pursuant to section 19(b) of the Act and the rules and regulations thereunder; and (3) represented that, pursuant to Exchange Rule 1080(f)(v), AUTOM users are notified in the event that AUTO–X is disengaged. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 (''Amendment No. 3'').

[6] In Amendment No. 4, the Exchange proposed to amend the rule text to provide that AUTOM users are notified in the event that AUTO–X is disengaged. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 (''Amendment No. 4'').

[7] AUTO–X is a feature of AUTOM, the Exchange's electronic order delivery and reporting system that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options.

[8] The Exchange notes that the Commission has directed that the respondent options exchanges adopt new rules, or amend existing rules, concerning their automated quotation and execution systems. The Exchanges must ''specify the circumstances, if any, under which automated execution systems can be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules and require the documentation of the reasons for each decision to disengage an automated execution system or operate it in any manner other than the normal manner.'' *See* Section IV.B.h.(i)(bb) of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Actions; *In the Matter of Certain Activities of Options Exchanges,* Securities Exchange Act Release No. 43268 (September 11, 2000).

[9] *See* Exchange Rule 1080(c) generally. See also SR–Phlx–2001–24, a proposed rule change to set forth the circumstances in which AUTO–X will be disengaged. Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728 (February 20, 2002).

section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(ii) No change.

(e) Extraordinary Circumstances-In the event of extraordinary circumstances with respect to a particular class of options exist, two Floor Officials may determine to disengage AUTO–X with respect to that option, in accordance with Exchange procedures. *Five minutes subsequent to the disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), the requesting Specialist or his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged when either: (i) the Specialist or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO–X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist.* In the event extraordinary [conditions] *circumstances* exist floor-wide, two Exchange Floor Officials[,] *and* the Chairperson of the Options Committee or his/*or her* designee may determine to disengage the AUTO–X feature floor-wide. *Five minutes subsequent to a floor-wide disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged when either: (1) The Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO–X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist.* The NBBO feature is always disengaged when AUTO–X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The Exchange shall document any action taken to disengage AUTO–X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO–X is disengaged due to extraordinary circumstances. Such documentation shall include: identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Floor Officials who approved such action; the reasons for which such action was taken; identification of the Specialist and the Specialist Unit (or in the case of floor-wide disengagement, identification of the Options Committee Chairperson or his/her designee); and identification of the Market Surveillance staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

* * * * *

A–13 Auto Execution Engagement/Disengagement Responsibility

It is the responsibility of the option Specialist to engage the Auto Execution (Auto-X) system for an assigned option within three (3) minutes of completing the opening or reopening rotation of that option.

Where extraordinary circumstances occur, a Specialist may be provided an exemption from receiving orders through AUTO–X and may then disengage the system upon approval by two Floor Officials. *Five minutes subsequent to the disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), the requesting Specialist or his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged when either: (i) the Specialist or his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO–X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist.* In the event extraordinary [conditions] *circumstances* exist floor-wide, two Exchange Floor Officials[,] *and* the Chairperson of the Options Committee or his/*or her* designee may determine to disengage the AUTO–X feature floor-wide. *Five minutes subsequent to a floor-wide disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged when either: (1) the Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO–X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist.* The NBBO feature is always disengaged when AUTO–X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option

Price Reporting Authority; or other similar occurrences.

The Exchange shall document any action taken to disengage AUTO–X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO–X is disengaged due to extraordinary circumstances. Such documentation shall include: identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Floor Officials who approved such action; the reasons for which such action was taken; identification of the Specialist and the Specialist Unit (or in the case of floor-wide disengagement, identification of the Options Committee Chairperson or his/her designee); and identification of the Market Surveillance staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to limit the duration for which Floor Officials may grant relief in the form of AUTO–X disengagement due to extraordinary circumstances, and to add the participation of the Phlx Market Surveillance staff in determining the continuation of the existence of extraordinary circumstances.

Currently, in order to obtain AUTO–X disengagement relief for a specific class of option due to extraordinary circumstances, the specialist must promptly notify the Phlx Market Surveillance Department that relief is requested.[10] The specialist must also obtain authorization from two Floor Officials. Currently, OFPA A–13 and Rule 1080(e) do not provide a specified time frame to re-evaluate the conditions under which a continuation of extraordinary circumstances may continue. Nor do they provide for substantial participation for Market Surveillance staff.

Under the proposed rules, the specialist would be required to notify the Phlx Market Surveillance Department that relief is requested to ensure proper notification to AUTOM users in accordance with Phlx Rule 1080(f)(v). The specialist also would be required to obtain authorization from two Floor Officials for relief. Two Floor Officials would continue to determine if relief is warranted.[11] Under the proposal, five minutes after the initial determination, and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect, the requesting specialist and two Floor Officials, with the concurrence of a designated Market Surveillance staff person, must re-evaluate whether extraordinary circumstances still exist. Thus, the proposed rules would provide substantial participation of Phlx Market Surveillance staff as well as a time period for re-evaluation. The Exchange believes that the amendments should assist in limiting the length of time that AUTO–X disengagement relief due to extraordinary circumstances continues.

The proposed rule changes, among other things, codify the Exchange's current practice as described in this paragraph. If at any time the specialist determines to re-engage AUTO–X, he/she may re-engage the system. The specialist must notify the Market Surveillance staff that the conditions supporting the extraordinary circumstances no longer exist, and that the specialist is re-engaging AUTO–X. This may be done after AUTO–X is re-engaged.

Currently, in the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/her designee may determine to disengage the AUTO–X feature floor-wide. Under the proposal, five minutes after the initial declaration and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect floor wide, two Floor Officials, the Chairperson of the Options Committee or his/her designee, with the concurrence of a designated Market Surveillance staff person, must re-evaluate the circumstances to determine if the floor-wide extraordinary circumstances still exist. Thus, the proposed rules would provide substantial participation of Market Surveillance staff during floor-wide extraordinary circumstances as well as a time period for re-evaluation. The Exchange believes that the amendment should assist in limiting the length of time floor-wide extraordinary circumstances continue.

The Exchange also proposes to define ''extraordinary circumstances'' under which AUTO–X may be disengaged and to specify in the rules the requirement that certain relevant information is documented by the Exchange upon actual disengagement and re-engagement of AUTO–X. Currently, extraordinary circumstances that justify disengagement include ''fast market conditions, systems malfunctions, and other circumstances that limit the Exchange's ability to disseminate or update market quotations in a timely and accurate manner.''[12] The instant proposal would amend and clarify this definition, which was used in the original proposed rule change adopting Exchange Rule 1080.[13]

The proposed rule would define extraordinary circumstances to include market occurrences and system malfunctions that impact a specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as increased volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The Exchange believes that these factors can quickly and precipitously affect the price of the underlying security, and thereby the option overlying the security. All these situations may result in the Exchange's inability to disseminate accurate and timely quotes. In such extraordinary circumstances, the Exchange believes that it is appropriate to allow specialists to execute orders manually that would otherwise be AUTO–X eligible in order to ensure that the specialist is able to

[10] *See* Exchange Rule 1080(f)(v).

[11] Under the current proposal, if such relief is granted, surveillance staff will announce to the Options Floor, and the AUTOM desk, that the particular option is in extraordinary circumstances.

[12] *See* Securities Exchange Act Release No. 38792 at note 17 (June 30, 1997), 62 FR 36602 (July 8, 1997).

[13] *Id.*

continue to make fair and orderly markets.

The proposed rule changes, among other things, codify the Exchange's current practice as described in this paragraph. With respect to record keeping requirements, the Exchange maintains an electronic audit trail, called an AUTO–X Disengagement Log, that electronically monitors and electronically records every situation in which AUTO–X is disengaged. With respect to any request for AUTO–X disengagement relief, the Exchange currently records: (1) Any action taken to disengage AUTO–X or to operate it in any manner other than normal; (2) the date of the specialist's request to disengage AUTO–X; (3) the time the specialist's request was granted, and the time of re-engagement; (4) the reason for the request to disengage (*e.g.,* extraordinary circumstances or other); (5) whether another market has implemented comparable relief; (6) the specialist's name; (7) the specialist unit's name; (8) the options class (except in a case of floor-wide disengagement); (9) the particular problem that the specialist experienced; and (10) the two Floor Officials' signatures (in case of floor-wide disengagement, the Options Committee Chairperson or his designee's signature is also required). Under the proposed rule, the Exchange would codify its practice of maintaining this documentation pursuant to the Exchange's record retention requirements under section 17 of the Act.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[15] in general, and section 6(b)(5),[16] in particular, because it is designed to perfect the mechanisms of a free and open market and a national market system, to promote just and equitable principles of trade, and to protect investors and the public interest, by codifying a definition of extraordinary circumstances that would give rise to relief from AUTO–X engagement, and by codifying procedures to be followed in extraordinary circumstances when AUTO–X is disengaged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

[14] 15 U.S.C. 78q.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–27 and should be submitted by May 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9060 Filed 4–12–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9P27]

Commonwealth of Massachusetts

Dukes County constitutes an economic injury disaster loan area as a result of a fire that destroyed approximately 9 businesses in a Historic Inn in Tisbury, Massachusetts on December 15, 2001. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 9, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration
Disaster Area 1 Office
360 Rainbow Blvd, South 3rd Floor
Niagara Falls, NY 14303

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The number assigned for economic injury for this disaster is 9P2700 for Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 9, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–9077 Filed 4–12–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3405]

State of Tennessee

As a result of the President's major disaster declaration on April 5, 2002, I find that Bledsoe, Blount, Claiborne, Cocke, Hancock, Hawkins, Loudon and Sevier Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and flooding occurring January 23 through 28, 2002 and March 15 through March 20, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 4, 2002 and for economic injury until the close of business on January 6, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified

date at the above location: Anderson, Campbell, Cumberland, Grainger, Greene, Hamblen, Hamilton, Jefferson, Knox, McMinn, Monroe, Rhea, Roane, Sequatchie, Sullivan, Union, Van Buren, Washington and White counties in the State of Tennessee; Bell and Whitley counties in the State of Kentucky; Graham, Haywood, Madison and Swain counties in the State of North Carolina; Lee and Scott counties in the State of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 340511. For economic injury the number is 9P2300 for Tennessee; 9P2400 for Kentucky; 9P2500 for North Carolina; and 9P2600 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 8, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–9075 Filed 4–12–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3403]

Commonwealth of Virginia

As a result of the President's major disaster declaration on April 2, 2002, I find that Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington and Wise Counties and the Independent City of Norton in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms and flooding occurring on March 17 through March 20, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 1, 2002 and for economic injury until the close of business on January 2, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bland, Buchanan, Grayson and Wythe counties and the Independent City of Bristol in the Commonwealth of Virginia; Bell, Harlan, Letcher and Pike counties in the State of Kentucky; Claiborne, Hancock, Hawkins, Johnson and Sullivan counties in the State of Tennessee; McDowell and Mercer counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.625
Homeowners without Credit Available Elsewhere	3.312
Businesses with Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 340311. For economic injury the number is 9P1400 for Virginia; 9P1500 for Kentucky; 9P1600 for Tennessee; and 9P1700 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 8, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–9076 Filed 4–12–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of expert roundtable meeting.

DATE: May 3, 2002, 9:00 a.m.–5:30 p.m.

ADDRESSES: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015, Phone: 202–362–9300, Fax: 202–686–3405, Meeting Room: Chevy Chase Ballroom.

SUPPLEMENTARY INFORMATION: *Type of meeting:* This expert roundtable, entitled ''Legal Issues and Implications of Implementation of the Ticket to Work and Work Incentives Improvement Act of 1999,'' is open to the public. The public is invited to participate by coming to the address listed above. Public comment will not be taken during the expert roundtable. The public is invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

The Panel will meet in person commencing on Friday, May 3, 2002 from 9 a.m. to 5:30 p.m.

The Panel will use the meeting time to conduct an expert roundtable. Interested parties are invited to attend the meeting.

Agenda: The Panel will hold an expert roundtable. Expert briefings and discussion of legal issues and implications of Ticket to Work and Work Incentives Act policies and provisions, including the Protection & Advocacy for Beneficiaries of Social Security program, dispute resolution, medical coverage, Ticket Program eligibility, vocational rehabilitation and the Americans with Disabilities Act, will be presented.

The full agenda for the meeting will be posted on the Internet at http://www.ssa.gov/work/panel/ one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the

Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC, 20024.
- Telephone contact with Kristen Breland at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: April 8, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–8974 Filed 4–12–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 942; ATF O 1130.27]

Delegation of the Director's Authorities in 27 CFR Part 252, Exportation of Liquors

To: All Bureau Supervisors

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officials and identifies the subordinate ATF officials with whom persons may file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to procedure and administration. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellation.* ATF O 1100.84A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR part 252, Exportation of Liquors, dated 3/23/84, is canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 252 to subordinate officials. Also, this ATF order identifies the subordinate officials with whom applications, notices, and reports required by 27 CFR part 252, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated.

5. *Questions.* If you have questions about this order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,

Director.

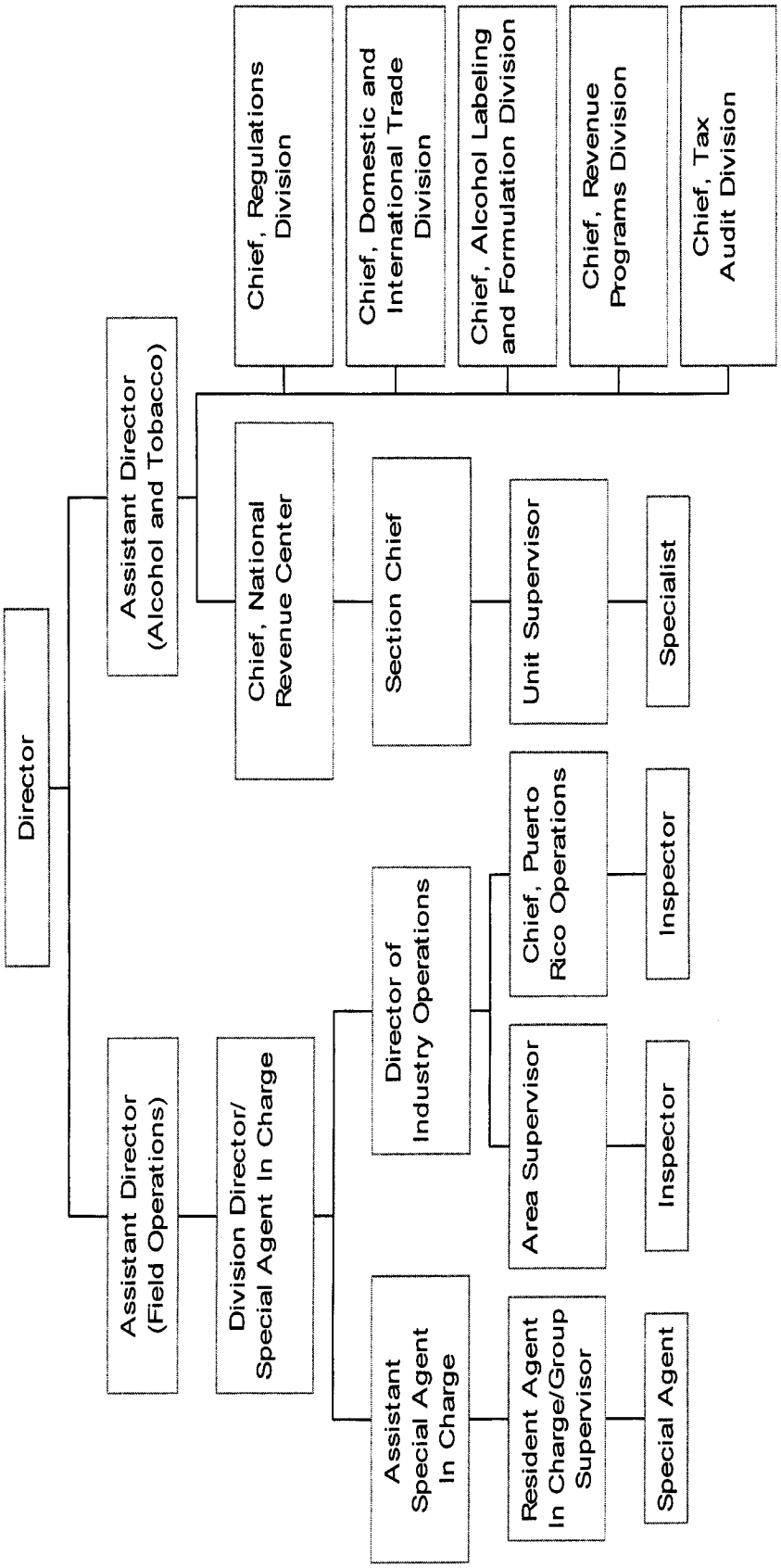
Regulatory section	Officer(s) authorized to act or receive document
§ 252.2(a)	Division Chief, Alcohol and Tobacco.
§ 252.20(a)	Chief, Regulations Division. If alternate method or procedure does not affect an ATF approved formula, or import or export recordkeeping, Chief, National Revenue Center (NRC), may act upon the same method or procedure that has been approved by the Chief, Regulations Division.
§ 252.20(b)	Director of Industry Operations.
§ 252.20(c)	Chief, Regulations Division, to withdraw alternate method or procedure. Director of Industry Operations to withdraw emergency variation.
§ 252.22	Unit Supervisor, NRC to whom report is made. Section Chief, NRC, to make demand of tax. Unit Supervisor to act on claim of $10,000 or less. Section Chief to act on claim of more than $10,000 but not more than $100,000 of tax. Chief, NRC, to act on claim of more than $100,000.
§ 252.23	Chief, Regulations Division.
§ 252.35	Area Supervisor.
§ 252.36	Area Supervisor with whom application is filed. Area Supervisor, to require additional evidence. Unit Supervisor, NRC, to whom district director of customs sends application.
§ 252.37	Area Supervisor.
§ 252.38	Area Supervisor.
§ 252.43	Chief, Regulations Division.
§ 252.45	Inspector, Specialist or Special Agent.
§ 252.52a	Section Chief, NRC.
§ 252.55	Section Chief, NRC.
§ 252.56	Section Chief, NRC.
§ 252.57	Section Chief, NRC.
§ 252.58(c)	Unit Supervisor, NRC.
§ 252.62(b)	Unit Supervisor, NRC.
§ 252.67	Section Chief, NRC, or Area Supervisor.
§ 252.70	Section Chief, NRC.
§ 252.71	Section Chief, NRC.
§ 252.72	Unit Supervisor, NRC.
§ 252.74	Section Chief, NRC.
§ 252.96	Specialist, NRC.
§ 252.103(b)	Chief, NRC, upon recommendation of Director of Industry Operations.
§ 252.104	Section Chief, NRC.
§ 252.116	Area Supervisor.
§ 252.117	Unit Supervisor, NRC.
§ 252.122(c) and (d)	Specialist, NRC.
§ 252.123(b)	Chief, NRC, upon recommendation of Director of Industry Operations.
§ 252.125	Unit Supervisor, NRC.
§ 252.131	Area Supervisor.
§ 252.133	Unit Supervisor, NRC.
§ 252.146	Unit Supervisor, NRC.
§ 252.147	Unit Supervisor, NRC.
§ 252.161	Area Supervisor.
§ 252.162	Unit Supervisor, NRC.

Regulatory section	Officer(s) authorized to act or receive document
§ 252.171	Unit Supervisor, NRC.
§ 252.195b(b)	Unit Supervisor, NRC or Area Supervisor.
§ 252.195b(c)	Unit Supervisor, NRC.
§ 252.198	Area Supervisor.
§ 252.199	Unit Supervisor, NRC.
§ 252.211	Unit Supervisor, NRC.
§ 252.215	Unit Supervisor or Area Supervisor.
§ 252.218	Unit Supervisor, NRC.
§ 252.220	Area Supervisor.
§ 252.220a	Unit Supervisor, NRC.
§ 252.221	Unit Supervisor, NRC.
§ 252.225	Unit Supervisor, NRC.
§ 252.226	Unit Supervisor, NRC.
§ 252.227	Unit Supervisor, NRC.
§ 252.247	Unit Supervisor, NRC.
§ 252.250	Unit Supervisor, NRC.
§ 252.262	Unit Supervisor, NRC.
§ 252.265	Director of Industry Operations.
§ 252.266	Director of Industry Operations.
§ 252.268	Unit Supervisor, NRC.
§ 252.269(c)	Unit Supervisor, NRC.
§ 252.275	Unit Supervisor, NRC.
§ 252.282	Unit Supervisor, NRC.
§ 252.285	Unit Supervisor, NRC.
§ 252.290	Unit Supervisor, NRC.
§ 252.301	Unit Supervisor to remit tax of $10,000 or less. Section Chief to remit tax of more than $10,000 but not more than $100,000 of tax. Chief, NRC, to remit tax of more than $100,000.
§ 252.302	Unit Supervisor to allow tax of $10,000 or less. Section Chief to allow tax of more than $10,000 but not more than $100,000 of tax. Chief, NRC, to allow tax of more than $100,000.
§ 252.303	Unit Supervisor, NRC.
§ 252.304	Unit Supervisor for claim of $10,000 or less. Section Chief for claim of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for claim of more than $100,000.
§ 252.310	Unit Supervisor for loss of $10,000 or less. Section Chief for loss of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for loss of more than $100,000.
§ 252.315	Unit Supervisor for loss of $10,000 or less. Section Chief for loss of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for loss of more than $100,000.
§ 252.316	Unit Supervisor for loss of $10,000 or less. Section Chief for loss of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for loss of more than $100,000. Unit Supervisor, NRC to require claim and grant extensions.
§ 252.317	Unit Supervisor, NRC, with whom claim is filed. Unit Supervisor, NRC, or Area Supervisor to request additional evidence.
§ 252.320	Unit Supervisor, NRC, to receive. Unit Supervisor for loss of $10,000 or less. Section Chief for loss of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for loss of more than $100,000.
§ 252.321	Section Chief, NRC.
§ 252.331	Unit Supervisor for claim of $10,000 or less. Section Chief for claim of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for claim of more than $100,000.
§ 252.332	Unit Supervisor, NRC.
§ 252.333	Unit Supervisor for claim of $10,000 or less. Section Chief for claim of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for claim of more than $100,000.
§ 252.334	Unit Supervisor for claim of $10,000 or less. Section Chief for claim of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for claim of more than $100,000.
§ 252.335	Unit Supervisor for claim of $10,000 or less. Section Chief for claim of more than $10,000 but not more than $100,000 of tax. Chief, NRC, for claim of more than $100,000.

BILLING CODE 4810–31–P

ATF O 1130.27

ATF Organization



This is not a complete organizational chart of ATF.

[FR Doc. 02–8870 Filed 4–12–02; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF THE TREASURY

Customs Service

Standards for Tariff Classification of Unisex Footwear

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice; solicitation of comments.

SUMMARY: This document invites the public to submit comments to Customs regarding what standards Customs should use in determining what constitutes ''unisex'' footwear for tariff classification purposes. Comments are invited on the appropriateness of specific standards suggested by a footwear trade association and on the extent to which any standards that Customs has followed in the past should be retained, and suggestions for appropriate alternative standards are also invited. After a review of the submitted comments, Customs will attempt to formulate specific proposed standards for further public comment prior to adoption of a final interpretive rule in this area.

DATES: Comments must be submitted by June 14, 2002.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch, Office of Regulations and Rulings (202–927–2380).

SUPPLEMENTARY INFORMATION:

Background

Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS) covers articles of footwear and footwear uppers and other parts of footwear. Within Chapter 64, heading 6403 covers ''[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.'' Under heading 6403, subheading 6403.99.60, specifically covers ''other'' footwear ''[f]or men, youths and boys'' and the two following subheadings (6403.99.75 and 6403.99.90) cover ''other'' footwear ''[f]or other persons.'' Additional U.S. Note 1(b) to Chapter 64, HTSUS, provides as follows:

(a) The term ''*footwear for men, youths and boys*'' covers footwear of American youths' size 11–½ and larger for males, and does not include footwear commonly worn by both sexes.

Nearly all types of footwear may be, and in fact are, worn by both sexes. Moreover, many types of shoes in male sizes feature no physical characteristics which distinguish the footwear as being exclusively for males. While Customs is often required to determine whether footwear in sizes for males is ''commonly worn by both sexes'' within the meaning of Additional U.S. Note 1(b) to Chapter 64, HTSUS, and thus is excluded from classification as ''for men, youths and boys'' under subheading 6403.99.60, HTSUS (and consequently must be classified as ''for other persons'' under subheading 6403.99.75 or subheading 6403.99.90, HTSUS), the standards for making that determination have been developed and applied by Customs on an *ad hoc*, case-by-case, basis. This approach to the ''unisex'' footwear issue, while effective in individual cases, has provided only limited guidance to the importing community and to Customs officers as regards other prospective or current import transactions that present different factual patterns involving that issue.

In a letter dated September 17, 1999, a request was made on behalf of the Footwear Distributors and Retailers of America (FDRA) that Customs Headquarters issue a policy memorandum or other decision to clarify the unisex footwear issue. The letter requested that Customs (1) set forth criteria for determining whether footwear claimed to be ''for men, youths and boys'' is ''commonly worn by both sexes'' and therefore should be classified as footwear ''for other persons'' and (2) ensure the uniform interpretation and application of those criteria by Customs field offices. To this end, the letter requested the adoption of a unisex footwear policy consisting of five specified elements.

In light of the request on behalf of the FDRA, and based on a review of the various criteria Customs has applied in this area as reflected in prior rulings and other written decisions, Customs believes that the complexity of this matter warrants preliminary public comment procedures to assist Customs in developing, for further public comment, specific proposals for standards to be applied in resolving issues regarding the classification of unisex footwear. To assist the public in preparing comments on this matter, the specific FDRA proposals and the standards Customs currently applies in this area are described below.

The FDRA Proposed Criteria

The elements of the unisex footwear policy proposed by the FDRA consisted of the following:

1. Footwear in sizes for men, youths and boys should not be considered ''commonly worn by both sexes,'' that is, ''unisex,'' if that particular type of footwear (for example, tennis shoes) is available in women's styles;
2. Determinations as to whether a type of shoe is ''commonly worn by both sexes'' should be based upon use by women or girls of at least 25 percent, a ratio of at least one female user to every four male users;
3. Footwear for males should be presumed not to be unisex if an importer markets a ''comparable'' number of styles for both sexes, and a ratio of five to one (male to female styles) should be considered ''comparable;''
4. In determining whether women's styles are available, the inquiry should focus on the availability of women's styles in the market as a whole; and
5. The fact that a shoe is not marketed to women should be considered evidence that it is not ''commonly worn by both sexes.''

The Current Customs Standards

In determining whether footwear is ''commonly worn by both sexes,'' Customs generally considers certain types or categories of footwear to be at least susceptible to unisex treatment (that is, to be classifiable as footwear ''for other persons'' despite claims that the footwear is designed and intended solely ''for men, youths and boys''). These types of footwear include hikers, sandals, work boots, cowboy boots, combat boots, motorcycle boots, ''athleizure'' shoes, boat shoes, and various types within the class described as athletic footwear (for example, tennis shoes, training shoes).

Customs generally considers that a type of footwear is ''commonly worn by both sexes'' if the number of styles claimed to be for males in an importer's line, when compared to the number of styles in the line for females, renders it likely that females will purchase and wear at least 5 percent of the styles claimed to be for males (in other words, one female user for every twenty male users). Since it is unlikely that a distributor or retailer would discourage the sale to females of footwear claimed to be for males, Customs would consider that an importer of basketball shoes claimed to be for use only by males, who imports no basketball shoes claimed to be for use only by females, is in fact an importer of basketball shoes

that potentially could be ''commonly worn by both sexes.''

Once it is determined that an imported line of footwear potentially susceptible to unisex treatment is in fact ''commonly worn by both sexes,'' Customs applies unisex treatment to that footwear line only in sizes up to and including American men's size 8. This size-limited treatment isolates from the full range of imported sizes those footwear sizes that are most ''commonly worn by both sexes.''

Even if a shoe in an imported line claimed to be for males is of a type of footwear commonly worn by both sexes (for example, a hiker, sandal, work boot, tennis shoe), Customs does not accord unisex treatment to the imported line if a ''comparable line'' of styles is available to females. The styles of the ''comparable line,'' however, should be substantially similar to the styles for males in general appearance, value, marketing, activity for which designed, and component material (including percentage) breakdowns.

With regard to a ratio of male styles to female styles at which a ''comparable line'' may be found to exist, in Headquarters Ruling Letter (HQ) 955960, issued August 19, 1994, Customs stated that ''* * * a good case * * * exists [for that finding] in the situation where an equal number of styles of a particular type of footwear * * * for men and women is available.'' In other words, a one to one ratio clearly establishes a ''good case'' by which an importer may avoid unisex treatment of footwear claimed to be for males.

For purposes of establishing the existence of a ''comparable line'' for females, Customs confines its determination to the imported footwear at issue. Customs may take notice of additional styles made available by the importer that are not included in a particular entry. Customs does not, however, consider the availability of comparable styles for females in the U.S. market as a whole in determining what constitutes an importer's ''comparable line.''

Finally, Customs does not consider the fact that a certain shoe is not marketed to women to be evidence that the shoe is not ''commonly worn by both sexes.'' Customs has no control over decisions regarding the marketing of imported footwear, and it is further noted that sales to females of footwear claimed to be for males, without the expense of marketing, would certainly appear to be profitable and therefore probably do occur.

Submission of Comments

Customs is interested in receiving preliminary comments from the public on all aspects of the unisex footwear issue for the purpose of assisting Customs in the preparation of specific proposals for further public comment, with a view to promulgating, if feasible, a final interpretive rule setting forth standards for the tariff classification of unisex footwear. Comments are specifically invited on, but need not be limited to, the following matters:

1. Whether specific, mandatory criteria, as opposed to general guidelines, should be used by Customs in resolving unisex footwear classification issues;
2. The acceptability of the five FDRA proposals both individually and as a group;
3. The extent to which any of the positions of Customs described above should be retained, revised or discarded;
4. Whether any general standards or specific criteria other than those already mentioned in this document should be adopted;
5. Whether the terms ''category,'' ''type,'' ''style,'' and ''line'' (or ''imported line'') should be specifically defined with reference to footwear for purposes of their use in developing unisex footwear classification standards; and
6. Whether application of unisex footwear classification standards should be limited to the subheadings under heading 6403, HTSUS, mentioned above or should also apply for purposes of classification under other HTSUS headings (for example, under heading 6402, for purposes of distinguishing at the statistical subheading level between footwear ''for men'' and footwear ''for women'' and ''other'' footwear.

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Dated: April 9, 2002.

John Durant,

Director, Commercial Rulings Division.

[FR Doc. 02–8987 Filed 4–12–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine locality pay rates for nurses at VA facilities.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data to determine locality pay rates for registered nurses and nurse anesthetists at VA facilities. Rates of pay are established by VA medical facility Directors based on rates of compensation for corresponding positions in the local labor market. The law requires that where available, data from the Bureau of Labor Statistics or other third party industry surveys will be used in determining the beginning rates of compensation. Without this information, VA cannot provide for a locality pay system to maintain competitive pay rates for the recruitment and retention of affected health care personnel.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,519 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,025.

Dated: March 28, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–8979 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a applicant's eligibility for loan guaranty benefits, and the amount of entitlement available.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0086'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for a Certificate of Eligibility for VA Home Loan Benefits, VA Form 26–1880.

OMB Control Number: 2900–0086.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1880 is used by an applicant to establish eligibility for loan guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen.

Affected Public: Individuals or households.

Estimated Annual Burden: 110,625 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 442,500.

Dated: March 28, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–8980 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information necessary to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0075'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies

must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–674 and 21–674c are used to collect the necessary information to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school. VA Form 21–674b is used to confirm the school attendance of a child for whom VA compensation or pension benefits are being received.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,792 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 177,500.

Dated: March 28, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–8981 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report expenses incident to a monetary recovery for injury or death, which may be excluded from countable income.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0545'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, VA Form 21–8416b.

OMB Control Number: 2900–0545.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8416b is used to report expenses incident to a monetary recovery for injury or death by a beneficiary of one of VA's income-based benefit programs. The information collected is used to determine the correct rate of VA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: April 4, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–8985 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed in reviewing credentials of a licensed independent provider to deliver health care to VA beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Credentials Transfer Brief, VA Form 10–0376a.

b. Credentials Supplemental Questions, VA Form 10–0376b.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Currently VHA requires that credentialing occur prior to extension of initial employment offers to health care providers. The credentialing occurs upon employment, transfer, or at the time of initiating practice at a new site. Although credentialing may have been completed by one VHA facility, policy requires that the credentialing process be repeated by the receiving facility. VA Form 10–0376a improves the efficiencies of this process by facilitating the sharing of already verified health care provider's credential data between facilities and decreases the potential for duplication of efforts.

Affected Public: Not-for-profit Institutions; Business or other; and State, Local or Tribal governments.

Estimated Annual Burden: 6,750 hours.

a. Credentials Transfer Brief, VA Form 10–0376a–500 hours.

b. Credentials Supplemental Questions, VA Form 10–0376b–6,250 hours.

Estimated Average Burden Per Respondent: 11 minutes.

a. Credentials Transfer Brief, VA Form 10–0376a–60 minutes.

b. Credentials Supplemental Questions, VA Form 10–0376b–15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25,500.

a. Credentials Transfer Brief, VA Form 10–0376a–500.

b. Credentials Supplemental Questions, VA Form 10–0376b–25,000.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–9006 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 8l0 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0116.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0116'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4193 is used by penal institutions to furnish information about incarcerated VA beneficiaries. The information is used to determine reduction or termination of a beneficiary's VA compensation or pension rate when the beneficiary is incarcerated in a penal institution in excess of 60 days after conviction.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2002, at page 2014.

Affected Public: Individuals or households, and State, Local or Tribal Government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,664.

Dated: March 28, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–8982 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice

announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0047.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0047'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6807 is used to determine an applicant's or obligor's creditworthiness. The major use of the form occurs in release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchaser/assumers meet the necessary requirements, among which is qualifying from a credit standpoint.

The form also can be used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan. It is also used to determine the eligibility of homeowners for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 18, 2002, at pages 2731–2732.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 40,000.

Dated: March 28, 2002.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–8983 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0052]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0052.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0052'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Report of Medical Examination for Disability Evaluation, VA Form 21–2545.

OMB Control Number: 2900–0052.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2545 is used to gather the necessary information from a claimant where the reasonable probability of a valid claim is indicated in any claim for disability compensation or pension, whether as an original claim, a reopened claim or a claim for increase, including claims for benefits set forth under 38 CFR 3.351(d) and (e) and for benefits based on the need of a veteran, surviving spouse, or parent for regular aid and attendance and for benefits based on a child's incapacity of self-support.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 28, 2002, at pages 3934 and 3935.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 180,000.

Dated: March 28, 2002.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–8984 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Somerville Asset Management Service Facility, Hillsborough, NJ

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate the VA Somerville Asset Management Service facility, Hillsborough, NJ, for an enhanced-use lease development. The Department intends to enter into a long-term lease of real property with a competitively selected lessee/developer who will

finance, design, develop, maintain, and manage the project, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Ed Bradley, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–9489.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec 8161 *et seq.,* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the property under the lease will be used to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: April 5, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–8986 Filed 4–12–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
April 15, 2002

Part II

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services Fiscal Year 2002 Assets for Independence Demonstration Program (IDA Program); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2002–08]

Request for Applications Under the Office of Community Services Fiscal Year 2002 Assets for Independence Demonstration Program (IDA Program)

AGENCY: Office of Community Services (OCS), Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Community Services' Assets for Independence Demonstration Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), invites eligible entities to submit competitive applications for new grants to establish, implement, and participate in the evaluation of demonstration projects that will offer Individual Development Accounts (IDAs) to lower income individuals and families. Applications will be screened and competitively reviewed as indicated in this Program Announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: To be considered for funding, applications must be *received* on or before June 14, 2002. Mail service in the Washington, DC area was disrupted a few months ago and for several weeks, all mail deliveries to the Administration for Children and Families stopped. Regular deliveries have resumed, but delays continue due to the irradiation process. It may be some time before the situation corrects itself. Consequently, it is strongly recommended that applicants avail themselves of overnight/express delivery such as Federal Express or United Parcel Service to submit their applications. Applications received after the due date will not be accepted for consideration in the first round of proposal reviews. If there is an insufficient number of acceptable applications in the first round of proposal reviews for OCS to fully expend available funds, a second round of applications will be accepted and reviewed, subject to the availability of funds, if *received* on or before August 5, 2002. Should this be the case, ACF will publish a timely notice to that effect in the **Federal Register**. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Sheldon Shalit (202) 401–4807, *sshalit@acf.dhhs.gov,* or Richard Saul (202) 401–9341, *rsaul@acf.dhhs.gov,* Department of Health and Human Services, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447.

In addition, this Announcement is accessible on the OCS Website for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/*—click on ''Funding Opportunities.''

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.602. The title is Assets for Independence Demonstration Program (IDA Program).

SUPPLEMENTARY INFORMATION: This program announcement consists of seven parts plus Attachments:

Part I: Program Overview and Background Information

Program overview, legislative authority, program purpose, project goals, program evaluation, and definition of terms.

Part II: Program Objectives, and Requirements

Program area, eligible applicants, project and budget periods, funds availability and grant amounts, project eligibility and requirements, cash non-Federal share funds requirements, preferences, multiple applications, treatment of program income, and agreements with partnering financial institutions.

Part III: The Project Description, Program Proposal Elements and Review Criteria

Purpose, project summary/abstract; objectives and need for assistance, results or benefits expected, approach, organizational profiles, budget and budget justification, non-Federal resources, and evaluation criteria.

Part IV: Application Procedures

Application development/availability of forms, application submission, intergovernmental review, initial OCS screening, consideration of applications, and funding reconsideration.

Part V: Instructions for Completing Application Forms SF424, SF424A, SF424B

Part VI: Contents of Application and Receipt Process

Content and order of program application, acknowledgment of receipt.

Part VII: Post Award Information and Reporting Requirements

Notification of grant award, attendance at technical assistance and evaluation workshops/conferences, reporting requirements, audit requirements, prohibitions and requirements with regard to lobbying, applicable Federal regulations.

Attachments

Application forms and required attachments.

Paperwork Reduction Act of 1995

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Program Overview and Background Information

A. Program Overview

This is a program established by the Assets for Independence Act (AFI Act) that is seeking to find out if, and how, Individual Development Accounts can best be used as a tool to help lower income working families accumulate assets; and to what extent such accumulation of assets will help stabilize and improve families and the community in which the families live.

Eligible Applicants

The Assets for Independence Demonstration Program offers five-year Federal grants to the following eligible applicants:

(1) One or more not-for-profit 501(c)(3) tax-exempt organizations;

(2) A State, local or Tribal government agency applying jointly with a 501(c)(3) tax exempt organization;

(3) A Community Development Financial Institution (CDFI) or a Low Income Credit Union (so designated by the National Credit Union Administration), that has a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community.

501(c)(3) Faith-Based organizations are eligible to apply for these grants.

Non-Federal Share Required

Applicants must include as part of their application submission a commitment for an amount in cash non-Federal share equal to the amount of the Federal grant requested, contingent only on the award of the grant. As explained in Part II Section H of this Announcement, to be considered for funding an Application must include a copy of an executed ''Non-Federal Share

Agreement'' as described in that section, including a schedule of payments and other relevant information. If the applicant is itself committing any of the non-Federal share, then it must include a ''Statement of Commitment'' signed by the official signing the application and countersigned by the applicant's Board Chairperson or Treasurer. The Non-Federal Share Agreement and/or the Statement of Commitment must commit to payment of the full amount at the outset of the project, or must provide that the schedule of deposits will be coordinated with the opening of all accounts so as to assure that accounts will only be opened when there are sufficient funds on hand and in the bank to meet the total amount of matching contributions pledged to those accounts during their lifetime and until they reach maturity.

Program Requirements as Set Out in This Program Announcement and the AFI Act

The Federal grant and the non-Federal cash are together deposited by the grantee in a Reserve Fund in an insured Financial Institution, normally a bank or a credit union. Once the non-Federal share funds are deposited in the Reserve Fund, the grantee may draw down an equal amount of its grant funds for deposit in the Fund. (If the entire amount of required non-Federal share is deposited in the Fund at the outset of the project, the grantee may draw down the entire grant at that time.) Over the ensuing five years 15% of the money in that Reserve Fund may be used by the grantee for project administration, participant support (which must include Financial Literacy/Budget Management Education) and collection of data for the government's evaluation of the program. At least 85% of the money in the Reserve Fund must be used to match the investment of savings from earned income in IDA's by project participants, which must be done no less often than every three months. Under the AFI Act the matched savings in the IDA may be used for acquisition of three assets:

- The purchase or building of a first home,
- The capitalization of a business, or
- The costs of post-secondary education.

Until funds are allocated to an IDA as matching contributions, interest they earn in the Reserve Fund is considered program income and may be used by the grantee for project administration and support services. Once funds are allocated to an IDA account, interest on those funds goes to that account.

Participant Eligibility

Households eligible to participate in the project are those eligible for TANF or the Earned Income Tax Credit (EITC), or whose income over the previous year was less than 200% of the poverty line as provided in Section 408(a)(1) of the AFI Act. (The most recent EITC income guidelines set eligibility at $27,413 for a household with one child, and $31,152 for a household with more than one child. At 200% of the most current Poverty line, eligibility limits are $35,206 for a family of four, and $41,638 for a family of five. The latest poverty line figures can be found in Attachment L to this Announcement.) To be eligible, households must also be below the net worth limit of $10,000 excluding primary residence and one motor vehicle.

Project Design

An organization applying for a grant under this program should first consider who will make up its targeted client population. To be effective as a tool, the IDA should be accompanied by a range of supportive services, a support network through which, ideally, the participant is already working to strengthen his or her family's well-being. So if the applicant organization is already working with a group of clients, or constituents, these are the best candidates for recruitment into the IDA project. They already know and trust the organization, and they have the support of a network in place that will help assure success in following through with their plans and achieving their goals. If the applicant organization is not already working with lower income families and providing the supportive services important to success, then it should seek to establish working partnerships with other organizations that can provide access to a group of prospective IDA participants with whom they are working and to whom they can provide the needed support. (As noted above, this is a requirement for CDFI's and Credit Unions applying for AFIA grants.)

When participants are enrolled in the project they enter into a Savings Plan Agreement with the grantee as described in Part II Section G. (4)(g) of this Announcement. This agreement includes several things:

(1) It sets a savings/investment schedule of a certain amount to be deposited by the participant in the IDA at regular intervals;

(2) It sets a goal of a total amount to be invested over that time;

(3) It identifies the asset to be acquired; and

(4) It sets the match rate by which the participant's investment will be matched by contributions from the Reserve Fund, which may be anywhere from one dollar to eight dollars for each dollar the participant puts into the IDA account. (Most projects use a match rate of one, two, or three to one.)

Under the AFIA, the maximum Federal matching contribution to one individual is $2000, which must be deposited with an equal amount of non-Federal dollars, which brings the total maximum amount of matching contribution from the Reserve Fund to $4000. The law also sets a maximum Federal matching contribution per household of $4000, for a total of $8000 from the Reserve Fund (to two or more accounts, or to a Joint Account owned by Husband and Wife).

Elements of a Successful Application

In putting together a successful application the following must be provided in order for the application to be considered for funding:

- A firm, written commitment of the required cash non-Federal share in an amount equal to the grant being requested, as a statement signed by officers of the applicant, or as part of a signed Non-Federal Share Agreement if the commitment is made by a third party; (See Part II Section H. of this Announcement.)
- Proof of 501(c)(3) tax-exempt status of the applicant (or joint applicant), if other than a CDFI or eligible Credit Union;
- A written, signed agreement with the partnering insured Qualified Financial Institution in which the Reserve Fund and Individual Development Accounts are to be opened, describing how the accounts are to be managed and the role of the financial institution in this process. If the applicant is a CDFI or an eligible Credit Union, in which the accounts will be maintained, they must instead include a written, signed Statement of Policy covering the same issues. See Part III (I), Project Element II(c);
- A completed Federal Standard Form 424, signed by an authorized official of the applicant;
- Completed Forms 424A and 424B and a Budget Justification; and
- A Project Narrative/Description of not more than 30 pages which responds to the Project Elements and Review Criteria set out in Part III Section I, Evaluation Criteria 1 through 7 of this Program Announcement.

Finally, where an applicant is proposing to be the lead agency or organization in a consortium or collaborative of agencies or

organizations which together will be carrying out the project to be funded, the application must include signed agreements between the collaborating organizations describing how each will participate in carrying out the project.

There are over 300 IDA programs of various designs operating today in different communities across the country. Most are quite new and all are in the process of learning what design features work best with a variety of circumstances and target populations. Applicants are encouraged to contact these programs to see what might be learned from their experiences: what pitfalls to avoid, what successes might be emulated or adapted. An excellent source of information and discussion about existing IDA programs is the website operated by the Corporation for Enterprise Development (CFED), and its ''IDA Learning Network'' and related ListServe. These can be reached at *www.idanetwork.org.* In addition, information about the OCS Demonstration Division IDA program is found at *www.acf.dhhs.gov/programs/ocs/demo,* where names and addresses for all of the currently funded AFIA demonstration projects can be found. The contractor's website at *www.pwieast.com* has the same information. Those wishing to learn more about the original theory of the need for and value of IDA's should read the book Assets for the Poor by Michael Sherraden, creator of the IDA concept.

Potential applicants are reminded, however, that OCS IDA projects funded pursuant to the AFI Act have specific limitations and requirements on program content and use of funds that may not be found in other IDA programs. Therefore, applicants must become familiar with the OCS requirements set out below and design their projects accordingly.

B. Legislative Authority

The Assets for Independence Demonstration Program (IDA Program) was established by the Assets for Independence Act (AFI Act), under Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285, 42 U.S.C. 604 Note), as amended.

C. Program Purpose

The purpose of the program is, in the language of the AFI Act: to provide for the establishment of demonstration projects designed to determine:

(1) The social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

(2) The extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

(3) The extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

D. Project Goals

The ultimate goals of the projects to be funded under the Assets for Independence Demonstration Program are:

(1) To create, through project activities and interventions, meaningful asset accumulation opportunities for households eligible for Temporary Assistance for Needy Families (TANF) and other eligible individuals and working families.

(2) To evaluate the projects to demonstrate the effectiveness of these activities and interventions and of the project designs through which they were implemented, and the extent to which an asset-based program can lead to economic self-sufficiency of members of the communities served through one or more qualified expenses; and

(3) Thus to make it possible to determine the social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income, and the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

E. Program Evaluation

Section 414 of the Assets for Independence Act requires that the Secretary enter into a contract with an independent research organization to evaluate the demonstration projects conducted under the Act, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the demonstration projects conducted under the AFI Act. To support this evaluation, the AFI Act also provides that not less than 2% of Federal grant funds be used by grantees to provide the independent research organization with such information regarding the demonstration project as may be required for the evaluation. The Secretary has contracted with Abt Associates, Inc., in Cambridge, Massachusetts, to carry out the required evaluation. OCS and ACF's Office of Planning, Research and Evaluation (OPRE) have worked together with the contractor in the development of an evaluation design whose implementation began in the Spring of 2001.

Section 414 also lists the factors to be addressed by the research organization in its evaluation, which include:

(1) The effect of incentives and institutional support on savings behavior;

(2) The savings rates of individuals based on demographic characteristics and income;

(3) The economic, civic, psychological and social effects of asset accumulation and how such effects vary among different populations or communities;

(4) The effects of IDA's on savings rates, home ownership, level of post secondary education attained, and self-employment, and how such effects vary among different populations or communities;

(5) The potential financial returns to the Federal Government and to other public and private sector investors in IDA's over a 5 and 10 year period;

(6) The lessons to be learned from the demonstration projects and if a permanent program of IDA's should be established; and

(7) Such other factors as the Secretary may prescribe.

The section then stipulates that in evaluating any demonstration project under the AFI Act, the research organization shall, before, during and after the project, obtain such quantitative data as are necessary to evaluate the program thoroughly. To this end OCS and its technical assistance contractor, PeopleWorks, Inc., have worked with ACF's Office of Planning Research and Evaluation (OPRE) and Abt Associates to develop a reporting format for AFIA grantees, and hope to make available to all grantees an Asset Development Information System to facilitate the maintenance, collection, verification and reporting of the data. In addition, section 414 directs the research organization to develop a qualitative assessment, derived from sources such as in-depth interviews, of how asset accumulation affects individuals and families.

Section 414 of the AFI Act, as amended, further provides that of the funds appropriated for each Fiscal Year, beginning with FY 2001, up to $500,000 will be available to carry out the evaluation.

F. Definition of Terms

For the purposes of this Announcement:

(1) AFI Act means the Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, as amended) which authorizes this program.

(2) Custodial Account means an alternative structure to a Trust for the establishment of an Individual Development Account, as described in PART II. G.(5).

(3) Eligible Individual means an individual who meets the income and net worth requirements of the program as set forth in PART II, Section G(3)(a) below.

(4) Emergency Withdrawal means a withdrawal of only those funds, or a portion of those funds, deposited by the eligible individual (Project Participant) in an Individual Development Account of such individual. Such withdrawal must be approved by the Project Grantee, must be made for an allowable purpose as defined in the AFI Act and under the Project Eligibility Requirements set forth in PART II of this Announcement, and must be repaid by the individual Project Participant within 12 months of the withdrawal. (See Part II, Section G.(7)(b))

(5) Household means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

(6) Individual Development Account (IDA) means a trust or a custodial account created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust or custodial account meets the requirements of the AFI Act and of the Project Eligibility and Requirements set forth in this Announcement. (See Part II. Section G. (4) and (5).)

(7) Net Worth of a Household means the aggregate market value of all assets that are owned in whole or in part by any member of the household, exclusive of the primary dwelling unit and one motor vehicle owned by a member of the household, minus the obligations or debts of any member of the household.

(8) Project Grantee means a Qualified Entity as defined in paragraph (11) below, which receives a grant pursuant to this Announcement.

(9) Project Participant means an Eligible Individual as defined in paragraph (3) above who is selected to participate in a demonstration project by a qualified entity.

(10) Project Year means, with respect to a funded demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally awarded a grant by ACF.

(11) Qualified Entity means an entity eligible to apply for and operate an assets for independence demonstration project as one or more not-for-profit 501(c)(3) tax exempt organizations, or a State or local government agency or a tribal government submitting an application jointly with such a not-for-profit organization, or an entity that—

(I) Is—

(a) A credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(b) An organization designated as a community development financial institution (CDFI) by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) Can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

(12) Qualified Expenses means one or more of the expenses for which payment may be made from an individual development account by a project grantee on behalf of the eligible individual in whose name the account is held, which are limited to expenses of (A) post-secondary education, (B) first home purchase, (C) business capitalization, and/or (D) transfers of IDA's to family members, as defined below:

(A) Post-Secondary Educational Expenses means post-secondary educational expenses paid from an individual development account directly to an eligible educational institution, and include:

(i) Tuition and Fees required for the enrollment or attendance of a student at an eligible educational institution.

(ii) Fees, Books, Supplies, and Equipment required for courses of instruction at an eligible educational institution, including a computer and necessary software.

(iii) Eligible Educational Institution means the following:

(I) Institution of Higher Education.—An institution described in Section 101 or 102 of the Higher Education Act of 1965.

(II) Post-Secondary Vocational Education School.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any State (as defined in section 521(33) of such Act) as such sections are in effect on the date of enactment of the AFI Act.

(B) First-Home Purchase means qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. Within this definition:

(i) Principal Residence means a main residence, the qualified acquisition costs of which do not exceed 120 percent of the average purchase price applicable to a comparable residence in the area.

(ii) Qualified Acquisition Costs means the cost of acquiring, constructing, or reconstructing a residence, including usual or reasonable settlement, financing, or other closing costs.

(iii) Qualified First-Time Homebuyer means an individual participating in the project involved (and, if married, the individual's spouse) who has had no present ownership interest in a principal residence during the 3-year period ending on the date on which a binding contract is entered into for purchase of the principal residence to which this subparagraph applies.

(C) Business Capitalization means amounts paid from an individual development account directly to a business capitalization account that is established in a Qualified Financial Institution and is restricted to use solely for qualified business capitalization expenses of the eligible individual in whose name the account is held. Within this definition:

(i) Qualified Business Capitalization Expenses means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan, when so certified by a Qualified Entity (Grantee) as meeting the requirements of sub-paragraphs (ii), (iii), and (iv) below.

(ii) Qualified Expenditures means expenditures included in a qualified plan, including but not limited to capital, plant, equipment, working capital, and inventory expenses.

(iii) Qualified Business means any business that does not contravene any law or public policy (as determined by the Secretary).

(iv) Qualified Plan means a business plan, or a plan to use a business asset purchased, which—

(I) Is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

(II) Includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(III) May require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(D) Transfers to IDAs of Family Members—Amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

(i) The individual's spouse; or

(ii) Any dependent of the individual with respect to whom the individual is allowed a deduction under section 151 of the Internal Revenue Code of 1986.

(13) Qualified Financial Institution means a Federally insured Financial Institution, or a State insured Financial Institution if no Federally insured Financial Institution is available.

(14) Qualified Savings of the Individual for the Period means the aggregate of the amounts contributed by an eligible individual from earned income to the individual development account of the individual during the period.

(15) Secretary means the Secretary of Health and Human Services, acting through the Director of the Office of Community Services.

(16) Tribal Government means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (24 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

(17) Trust Agreement means the instrument by which an Individual Development Account is established as a trust in the partnering Financial Institution under PART II Section G.(4).

(18) Trustee means the Qualified Financial Institution responsible for management of an Individual Development Account established as a trust pursuant to a Trust Agreement.

Part II. Program Objectives and Requirements

The Office of Community Services (OCS) invites qualified entities to submit competing grant applications for new demonstration projects that will establish, support, manage, and participate in the evaluation of Individual Development Accounts for eligible participants among lower income individuals and working families.

A. Program Area

There is one Program Area under this program for Fiscal Year 2002, under which OCS will accept applications from Qualified Entities as described below in Section B.

(Continuation of grants to Pennsylvania and Indiana, funded under Priority Area 2.0 of the Fiscal Year 1999 Assets For Independence Program Announcement will not require applications in response to this Program Announcement; but will be the subject of direct correspondence between OCS and the grantees as noted in Section F below.)

B. Eligible Applicants

(1) In General

Eligible applicants for the Assets for Independence Demonstration Program are Qualified Entities, as defined above in Part I, Section F.(11), and are one or more not-for-profit 501(c)(3) tax exempt organizations, or a State or local government agency or a tribal government submitting an application jointly with such a not-for-profit organization, or an entity that—

(I) Is—

(a) A credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(b) An organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) Can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

501(c)(3) Tax exempt Faith-Based organizations are eligible to apply for these grants.

Not-for-profit Applicants, including those filing jointly with government agencies or Tribal Governments, must provide documentation of their tax exempt status in order to receive grants under this Announcement. The applicant can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of their currently valid IRS tax exemption certificate. Grants will not be awarded to applicants which have not supplied evidence of currently valid section 501(c)(3) tax exempt status. Similarly, eligible credit unions and CDFI's must provide written documentation of their status and evidence of their collaborative relationship with an appropriate local community-based organization.

(2) Applications Submitted Jointly by State or Local Government Agencies or Tribal Governments and Tax Exempt Non-Profit Organizations

Joint applications by government agencies and non-profit organizations must clearly identify the joint applicants; and the SF 424 Application for Federal Assistance must be signed by one of the joint applicants. The applicant signing the SF 424 will be responsible for proper implementation of the grant in accordance with the approved work program and the terms and conditions of the grant. (It may be either the government agency applicant or a non-profit applicant).

In either case, a Reserve Fund must be established for the Project either by the government agency/tribal government joint applicant or by the non-profit joint applicant, and maintained and managed as agreed by the Joint Applicants in the Joint Application Agreement. The Reserve Fund must be established in accordance with Section G, Paragraphs (1) and (2), below.

Such joint applications must also include:

(a) Proof of tax exempt status of the non-profit Joint Applicant, as described in Paragraph (1), above; and

(b) A Joint Applicant Agreement, signed by the responsible officials of both Joint Applicants, setting forth the responsibilities of each Joint Applicant for implementation of the proposed project, including establishment, management, and oversight of the Reserve Fund, and the carrying out of the project activities and interventions described in Element II of the proposal narrative. (See Part III, below.) The Joint Applicant Agreement should be the first Appendix to the Application, and the responsibilities it sets out should be described in the Project Narrative under Elements I and II, Section I Evaluation Criteria, in Part III of this Announcement.

Where the project includes a group or consortium of operating partners, the project may include both a central and local Reserve Funds as described below in Section G Paragraph (1), Reserve Fund, Note.

(3) Applications Submitted by a Lead Agency on Behalf of a Consortium of Partnering Organizations

Where the Applicant is applying as the lead agency for a consortium or group of partnering organizations, each of these organizations and their relevant experience must be briefly described in the Application narrative, and background materials citing their relevant experience and staff

capabilities should be included in the Appendix.

In such cases:

—The Applicant/Lead Agency should document its capability and experience in managing such consortia;

—The roles and responsibilities of all participating agencies should be clearly set forth in signed Partnering Agreements between the Applicant and each of the partnering members;

—Copies of the Partnering Agreements should be included in the Appendix; and, in addition;

—The roles and responsibilities of each participating agency clearly explained in Part III, Element I and Element II(b), Project Design, and reflected in the Work Plan under Element II(d). These explanations must include the plans for establishing one or more Reserve Fund(s), and how and where IDA Accounts and Parallel Match Accounts will be maintained, as reflected in the Financial Institution Agreement(s)/Statement of Policy under Part III, Element II(c). (See also Section G. Paragraph (1) Reserve Fund, and Section L, Agreements with Partnering Financial Institutions/Statements of Policy below.)

C. Project and Budget Periods

This announcement is inviting applications for project and budget periods of five (5) years. Grant actions, on a competitive basis, will award funds for the full five year project and budget period. As noted below in Section E., subject to the availability of funds, grantees may be offered the opportunity to submit applications for additional funding in later years during the five-year project.

Note: Applicants should be aware that OCS funds awarded pursuant to this Announcement will be from FY 2002 funds and may not be expended after the end of the five-year Project/Budget Period to support administration of the project or matching contributions to Individual Development Accounts which may be open at that time. Consequently, Applicants should consider carefully the length of time participants will need to achieve their savings/investment goals and at what point in the project they may wish to discontinue the opening of new accounts. Applicants must provide assurance that in every case provision will be made for payment of all promised matching contributions to IDA accounts opened by project participants in the course of the demonstration project. In order to assure such payment, no accounts may be opened unless there are at the time accounts are opened sufficient funds in the Reserve Fund needed to make the total amount of matching contributions pledged to those accounts during their lifetime until they reach maturity. This means that, as noted below, non-Federal share funds, if not deposited in full at the beginning of the project, must be deposited on a schedule consistent with the planned schedule of new account opening.

D. Funds Availability and Grant Amounts

In Fiscal Year 2002 OCS expects approximately $20 million to be available for funding commitments to approximately 50 new projects, including grants to existing grantees as explained below in Section E, expected to average approximately $400,000 each, and not to exceed $1,000,000 each for the five-year project and budget periods. As noted below, in Paragraph J, Multiple Applications, Qualified Entities may submit more than one application for different demonstration projects and each such application will be reviewed competitively with all other applications submitted pursuant to this Announcement and may be funded in accordance with the reviewer ratings and other factors as described below in Part IV Sections D and E, Initial Screening and Consideration of Applications. Each such Application must be a request for a separate and distinct project, with completely distinct and separate budgets, project participants, and IDA's being funded; and each Application must fully comply with the provisions of this Part, and fully respond to all of the Program Elements and Evaluation Criteria set out in Part III, below. Applicants are reminded that grant awards are limited to the amount of committed non-Federal cash matching contributions; and that OCS recognizes that this is a limiting factor in the amount of grant funds requested. Applicants are assured that OCS will welcome requests for less than the maximum grant amounts, and are urged to make realistic projections of project activity over the five year project and propose project budgets accordingly. As in the past, subject to the availability of funds and the progress of individual demonstration projects, grantees that have raised additional cash non-Federal share contributions may be given the opportunity to request additional funding in FY 2003 for new five-year projects. Draw-down of grant funds over the five-year budget period may be made in amounts that will match non-Federal deposits into the Project Reserve Fund. However, it must be remembered that all IDA accounts must reach maturity and be paid out by the end of the five year project/budget period, so that if the average participant requires two years to complete his or her savings plan, no new accounts can be opened after the third year of the project. This means that all Federal and non-Federal share dollars must be deposited into the Reserve fund by the end of the third project year. (See Section G. (1)(a) and Section H, below).

E. Funds Availability for Additional Grants to FY 1999, 2000, and 2001 Grantees

As noted above in Section F, existing grantees may apply for up to $1 million for a new five-year project. Applications from these grantees will be reviewed competitively with other applications received pursuant to this Announcement.

F. Funds Availability and Grant Amounts for Continuation Funding of Grandfathered State Grantees (FY 1999 Priority Area 2.0 Grantees: Indiana and Pennsylvania)

In Fiscal Year 2002 up to approximately $2 million is expected to be available for up to two continuation grants not to exceed $1 million each for the fourth budget year of a five-year State project funded under Priority Area 2.0 of the FY 1999 Assets for Independence Program Announcement. These continuation of grants will not require applications pursuant to this Program Announcement; but will be the subject of direct correspondence between OCS and the grantees. Any funds not expended in FY 2002 for these Continuation Grants will be available for new project grants as described above in Sections D and E.

G. Project Eligibility and Requirements

To be eligible for funding, projects must be sponsored and managed by Qualified Entities and must meet the following requirements:

(1) Reserve Fund

Every project funded under this Announcement must establish and maintain a Reserve Fund in accordance with this paragraph. Such Reserve Fund must be maintained in accordance with the accounting regulations prescribed by the Secretary under 45 CFR Parts 74 and 92, in a Qualified Financial Institution or other insured financial institution satisfactory to the Secretary.

Note: Where an applicant is lead agency for a consortium or group of partnering organizations, each of which will be implementing an IDA program under the Applicant's grant pursuant to this Announcement, the Applicant/lead agency must maintain a Reserve Fund into which all required non-Federal share matching contribution funds and OCS grant funds shall be deposited in accordance with Paragraph (a), below. The consortium has two

alternatives for maintenance of Reserve Fund(s) in its IDA programs:

First, participating organizations may all operate out of the one central Reserve Fund maintained by the Applicant/lead agency. In this case separate accounting structures would be maintained for each of the partnering organizations and the funds assigned for their use in accordance with agreements between the Applicant and each organization.

Or second, in addition to the Central Reserve Fund, partnering organizations may each establish a local Reserve Fund in their community into which the Applicant-/lead agency will deposit from the Central Reserve Fund the funds (grant and non-Federal share) allocated for use by the particular organization. Central and local Reserve Funds will be subject to all of the requirements of this Section. Whatever the arrangement, it must be spelled out and agreed to in the Partnering Agreements between the Applicant and each consortium member required under Section B. Paragraph (3), above.

(a) Amounts in the Reserve Fund. As soon after receipt as is practicable, grantees shall deposit in the Reserve Fund the required non-Federal share funds received pursuant to the ''Non-Federal Share Agreement'' or Agreements reached with the provider(s) of non-Federal matching contributions. Once such non-Federal funds are deposited in the Reserve Fund, grantees may draw down OCS grant funds in amounts equal to such deposits. Similarly, as soon after receipt as practical, grantees shall deposit in the Reserve Fund the income received from any investment made of those funds (see paragraph (d) below).

(b) Use of Amounts in the Reserve Fund. In accordance with Section 407(c) of the AFI Act, Qualified Entities (grantees) shall use the amounts in the Reserve Fund as follows:

(i) In General.—A qualified entity shall use the amounts in the Reserve Fund * * * to—

(A) assist participants in the demonstration project in obtaining the skills (including economic literacy, budgeting, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses;

(B) provide deposits (as matching contributions, equally divided between federal and non-federal monies) to individual development accounts for project participants, in an agreed upon ratio to deposits made in those accounts by project participants from earned income;

(C) administer the demonstration project; and

(D) provide the research organization evaluating the demonstration project * * * with such information with respect to the demonstration project as may be required for the evaluation.

(ii) Limitation on Uses.—Not more than 15 percent of AFIA Federal grant funds shall be used by the qualified entity (grantee) for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 2 percent of the grant funds shall be used for the purposes described in paragraph (1)(D). Of the total amount of 15 percent of grant funds, not more than 7.5 percent of such funds shall be used for administrative functions under paragraph (1)(C), including program management, reporting requirements, recruitment and enrollment of individuals, and monitoring. The remainder of the total amount of 15 percent of grant funds (not including the 2 percent specified under paragraph (1)(D)) shall be used for nonadministrative functions described in paragraph (1)(A), including case management, budgeting, economic literacy, and credit counseling. If the cost of nonadministrative functions described paragraph (1)(A) is less than 5.5% of the total of Federal grant funds, such excess funds may be used for administrative functions. If two or more qualified entities (grantees) are jointly administering a project, no qualified entity shall use more than its proportional share of grant funds for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

(iii) Matching Contributions to IDA's.—Thus, at least 85 percent of AFIA Federal grant funds and an equal amount of the required non-Federal share funds in the Reserve Fund shall be used to make matching contributions, equally divided between Federal and non-Federal monies, to individual development accounts for project participants, in an agreed upon ratio to deposits made in those accounts by project participants from earned income. The remaining balance of up to 15% of the required matching non-Federal share funds shall be used either for expenses outlined in Paragraphs (A), (C) and (D) above, or other project-related expenses as agreed by the Applicant and the entity providing the funds.

Note: If a grantee mobilizes additional contributions in excess of the required 100 percent non-Federal share match, such funds may be used however the grantee and provider of the funds may agree. Where the use of such funds is proposed within a Program Element/Proposal Review Criterion which formed the basis for the grant award, Grantees will be held accountable for commitments of such additional mobilized funds and additional resources, even though over the amount of the required non-Federal match.

(c) Authority to Invest Funds. A grantee shall invest the amounts in its Reserve Fund that are not immediately needed for payment under paragraph (b), in a manner that provides an appropriate balance between return, liquidity, and risk, and in accordance with Guidelines which will be issued by the Secretary prior to making of grant awards and provided to grantees at the time of grant award.

(d) Use of Investment Income. Income generated from investment of Reserve Fund monies that are not allocated to existing Individual Development Accounts may be added by grantees to the funds committed to program administration, participant support, or evaluation data collection. As noted in Section K, below, once funds have been committed as matching contributions to Individual Development Accounts, then any income subsequently generated by such funds must be deposited/credited to the credit of such accounts. **Note:** No part of such income is to be considered as a Federal funds contribution subject to the $2000/$4000 limitations under Paragraph (6)(c), below.

(e) Joint Project Administration. If two or more qualified entities are jointly administering a project, none shall use more than its proportional share for the purposes described in subparagraphs (A) and (C), of paragraph (b) (Support Services and Administration).

(2) Use of Grant Funds by State and Local Government Agencies and Tribal Governments

As set forth in Section B. Paragraph (2) above, grantees who are State or local government agencies or Tribal governments are required to submit applications jointly with tax exempt non-profit organizations. In such cases, whether the lead applicant signing the SF 424 is the government agency or the non-profit organization, a Reserve Fund for the Project must be established, and maintained, and managed as agreed by the Joint Applicants in their Joint Application Agreement. The Reserve Fund so established shall be subject to the requirements of Paragraph (1) above, and Section H, below.

(3) Eligibility and Selection of Project Participants

(a) Participant Eligibility. Eligibility for participation in the demonstration projects is limited to individuals who are members of households eligible for assistance under TANF, or of households whose adjusted gross income does not exceed the earned income amount described in Section 32 of the Internal Revenue Code of 1986, which establishes eligibility for the

Earned Income Tax Credit (EITC) (taking into account the size of the household), or of households whose annual income does not exceed 200% of the poverty line as provided in Section 408(a)(1) of the AFI Act, and whose net worth as of the end of the calendar year preceding the determination of eligibility does not exceed $10,000, excluding the primary dwelling unit and one motor vehicle owned by a member of the household.

Note: The most recent EITC Earned Income Guidelines which set the limits on annual income for eligibility in the IDA Program are as follows:

—for a household without a child: $10,380
—for a household with one child: $27,413.
—for a household with more than one child: $31,152.

The most recent final Poverty line thresholds are set forth in Attachment L to this Announcement. Annual revisions of these thresholds are normally issued by the Bureau of the Census in September. Where relevant to IDA Project criteria, grantees will be required to apply the most recent thresholds throughout the project period. These revised thresholds may be obtained as part of the latest Census Bureau Report, ''Poverty in the United States''. The thresholds may be found on the web at *http://www.census.gov/hhes/poverty/threshld.html.*

Note: where the website shows a heading for preliminary thresholds for a given year, click on the preceding year for the current final thresholds. The thresholds will also be accessible on the OCS WEBSITE for reading and/or downloading (*http://www.acf.dhhs.gov/programs/ocs*).

Applicants are reminded that there is also a net worth assets test for eligibility in the program, as noted above.

(b) Participant Selection. In keeping with the statutory preference in Section 405(d)(3) of the AFI Act for applications that target individuals from neighborhoods or communities that experience high rates of poverty or unemployment, grantees in their selection of Project Participants may restrict participation in such neighborhoods or communities targeted by their demonstration projects to individuals and households with lower incomes and net worth than set forth above, provided that they shall nonetheless select individuals who they determine are well suited to participate in the demonstration project.

(4) Establishment of Individual Development Accounts

Project Grantees must create, through written governing instruments, either (a) Trusts, under this paragraph, or (b) Custodial Accounts described here and in Paragraph (5) below, which will be Individual Development Accounts on behalf of Project Participants. Trustees of Trusts must be Qualified Financial Institutions. Custodians of Custodial Accounts may be Qualified Financial Institutions, other insured financial institutions satisfactory to the Secretary, or Demonstration Project Grantees. In every case the Participant shall make deposits from earned income into his or her Individual Development Account in a participating insured financial Institution, which in the case of Qualified Entities which are eligible Credit Unions or CDFI's, may be the Qualified Entity itself.

No Individual Development Accounts shall be established or opened unless and until there are sufficient funds in the Grantee's Reserve Fund to make the total matching contributions pledged to those accounts during their lifetime until they reach maturity.

In every case where the participating insured financial institution and the Demonstration Project Grantee are not one and the same, both shall be parties to the written governing instruments creating the Trust or Custodial Account.

The written governing instruments creating the IDA accounts must contain the following provisions:

(a) All contributions to the accounts must be either in cash, by check, money order, or by electronic transfer of funds.

(b) The assets of the account will be invested in accordance with the direction of the Project Participant after consultation with the grantee and pursuant to the guidelines of the Secretary (which will be issued prior to the making of grant awards and made available to grantees at the time of grant award).

(c) The assets of the account will not be commingled with other property except in a common trust fund or parallel account or common investment fund.

(d) In the event of the death of the Project Participant, any balance remaining in the account shall be distributed within 30 days of the date of death to another Individual Development Account established for the benefit of an eligible individual as directed by the deceased Participant in the Savings Plan Agreement under sub-paragraph (g), below; provided, that Participants may at their option direct the disposition of any funds in the account which were deposited in the account by the Participant as he or she may see fit, except that where such disposition is not to another Individual Development Account, all matching contributions made by the grantee to the account, and any income earned thereby, shall be returned to the Reserve Fund. [Note that this will mean that each Project Participant must provide such direction at the time the Individual Development Account is established. Provision should be made by grantees for modification of such directions during the course of the project, in the event of changing circumstances.]

(e) Except in the case of the death of the Project Participant, amounts in the account attributable to deposits by the grantee from grant funds and matching non-Federal contributions, and any interest thereon, may be paid, withdrawn or distributed out of the account only for the purpose of paying Qualified Expenses of the Project Participant including transfers under Paragraph (7)(d), below.

(f) The procedures governing the withdrawal of funds from the Individual Development Account, for both Qualified Expenses and Emergency Withdrawals, must comply with the provisions of Paragraph (7) Withdrawals from Individual Development Accounts, below.

(g) A ''Savings Plan Agreement'' between the grantee and the Project Participant, which may be incorporated by reference, and which should include:

(1) Savings goals (including a proposed schedule of savings deposits by the Participant from earned income, which may be for a period of less than five years);

(2) The rate at which participant savings will be matched (from one dollar to eight dollars for each dollar in savings deposited by Participant, the Federal grant funds portion of which may not exceed $2000 during the five-year project period);

(3) The proposed qualified expense for which the account is maintained;

(4) Agreement by the grantee to provide and the Participant to attend classes in Economic Literacy Training;

(5) Any additional training or education related to the qualified expense which the Grantee agrees to provide and of which the Participant agrees to partake;

(6) Contingency plans in the event that the Participant exceeds or fails to meet projected savings goals or schedules;

(7) Any agreement as to investments of assets described in subparagraph (b), above;

(8) An explanation of withdrawal procedures and limitations, including the consequences of unauthorized withdrawal;

(9) Provision for disposition of the funds in the account in the event of the

Participant's death (see sub-Paragraph (d), above); and

(10) Provision for amendment of the Agreement with the concurrence of both Grantee and Participant.

(5) Custodial Accounts

As provided in Paragraph (4), above, Grantees may, in the alternative, create, through written governing instruments, Custodial Accounts which shall be Individual Development Accounts on behalf of Project Participants, except that they will not be trusts. As in the case of trusts established under paragraph (4), the written governing instruments creating the accounts must contain the requirements outlined in subparagraphs (a) through (g) of that paragraph, with the following exceptions. Whereas trustees of the trusts created under Paragraph (4) must be Qualified Financial Institutions, the assets of the custodial account may be held by a bank or another institution that demonstrates to the satisfaction of the Secretary that the manner in which the account will be administered will be consistent with the provisions of the AFI Act, and that the IDA's will be created and maintained as described in paragraph (4) and section 404(5)(A) of the AFI Act. In addition, in the case of a custodial account treated as a trust by reason of this paragraph, the custodian of such account may be the Project Grantee, provided that it can assure compliance with the requirements of Paragraph (4) above, and section 404(5)(A) of the AFI Act. These arrangements would place the ''custodial'' responsibilities with the grantee, and relieve financial institutions of trustee obligations. The Secretary has determined that the assets of any such accounts must be held in an insured financial institution and be subject to the provisions of Paragraph L, below, pertaining to agreements between applicants/grantees and participating financial institutions.

Within the meaning of this OCS Program Announcement, IDA ''Custodial Accounts'' in which project participants deposit their savings may be solely owned by the participant and in the sole name of the participant. Funds in the account may only be expended for ''Qualified Expenses'' or an ''Emergency Withdrawal'' as defined in the AFI Act and this Program Announcement; and in keeping with this restriction, any withdrawals must be approved in writing by a responsible official of the project grantee. At the same time, if the participant requests approval for an ''unauthorized withdrawal'' of funds deposited by the participant into the account, that is, for other than a ''Qualified Expense'' or ''Emergency Withdrawal'' as defined in the AFI Act, and Part I, Section D (4) and (12), above, the project grantee must agree to approve such an ''Unauthorized Withdrawal'' of the participant's funds, with the explicit understanding on the part of both the grantee and the participant, that the participant thereby loses any matching funds credited to the account (including any accrued interest on the matching funds), and must exit the program.

(6) Deposits in Individual Development Accounts

(a) Matching Contributions. Not less than once every three months during the demonstration project grantees will make deposits into Individual Development Accounts as matching contributions to deposits from earned income made by Project Participants during the period since the previous deposit. Such deposits may be made either into the accounts themselves or into a parallel account maintained by the grantee in an insured financial institution (or in the grantee institution itself, in the case of grantees which are eligible Credit Unions or CDFI's). It is strongly recommended that matching contributions by grantees be deposited in parallel accounts maintained by financial institutions, rather that in the participants' IDA accounts, as a way of protecting matching contributions from possible attachment or other liability.

Note: Deposits made by Project Participants shall be deemed to have been made from earned income so long as the income earned (as defined in section 911(d)(2) of the Internal Revenue Code of 1986) during the period since the Participant's previous deposit in the account is greater than the amount of the current deposit. Section 911(d)(2) provides, in relevant part, ''the term 'earned income' means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered''.

Matching contributions (as deposits to IDA accounts or to parallel accounts) must be made to IDA's in equal amounts from Federal grant funds and the non-Federal public and private funds committed to the project as described in Section H below, and sections 405(c)(4) and 406(b)(1) of the AFI Act. Such matching contribution deposits by grantees may be from $0.50 to $4 in non-Federal funds and an equal amount in Federal grant funds, for each dollar of earned income deposited in the account by the Project Participant in whose name the account is established. At the time matching contribution deposits are made, the grantee will also deposit into the Individual Development Account (or the parallel account) any interest or income that has accrued since the last deposit on amounts previously deposited in or credited to that IDA in the parallel account as matching contributions.

(b) Additional Matching Contributions. Once such equal matching contribution deposits are made, grantees may make additional matching contributions to IDA's from other non-Federal sources, or other Federal sources, such as TANF, where the legislation or policies governing such sources so permit. Such additional matching contributions would not be a use of funds falling within any Program Element/Proposal Review Criterion under Part III below, which formed the basis for the grant award, and as such, grantees will not be held accountable for their commitment to the project.

(c) Limitations on Matching Contributions. Over the course of the five year demonstration, not more than $2,000 in Federal grant funds shall be provided through matching contributions to any one individual; and not more than $4,000 shall be provided to IDA's in any one household. Such matching contributions of Federal grant funds must be matched, dollar-for-dollar, by matching contributions of non-Federal share dollars from the Reserve Fund. [As noted in Paragraph (1)(d), above, no part of any investment or interest income earned by monies in the Reserve Fund or a parallel account credited to the Participant is to be considered as a Federal funds contribution subject to this limitation.]

(7) Withdrawals From Individual Development Accounts

(a) Limitations. Under no circumstances may funds be withdrawn from an Individual Development Account earlier than six months after the initial deposit by a Project Participant in the account. Thereafter funds may be withdrawn from such account only upon written approval of the Project Participant and of a responsible official of the project grantee, and only for one or more Qualified Expenses (as defined in Part I) or for an Emergency Withdrawal. (See Paragraph (5) Custodial Accounts, above, for the Participant's right to make ''unauthorized withdrawals'' and the consequences thereof.)

(b) Emergency Withdrawals. An Emergency Withdrawal may only be of those funds, or a portion of those funds, deposited in the account by the Project Participant, and only for the following purposes:

(i) Expenses for medical care or necessary to obtain medical care for the

Project Participant or a spouse or dependent of the Participant;

(ii) Payments necessary to prevent eviction of the Project Participant from, or foreclosure on the mortgage for, the principal residence of the Participant;

(iii) Payments necessary to enable the Project Participant to meet necessary living expenses (food, clothing, shelter—including utilities and heating fuel) following loss of employment.

(c) Reimbursement of Emergency Withdrawals. A Project Participant shall reimburse an Individual Development Account for any funds withdrawn from the account for an Emergency Withdrawal, not later than 12 months after the date of the withdrawal. If the Participant fails to make the reimbursement, the Project Grantee must transfer back to its Reserve Fund Federal and non-Federal matching contributions deposited into the account or a parallel account, and any income generated thereby. Any remaining funds deposited by the Project Participant (plus any income generated thereby) shall be returned to such Project Participant.

Applicants are urged to consider the establishment of a separate alternative crisis or emergency loan fund that can respond to participant emergencies without having them risk putting their IDA in jeopardy because of an inability to make reimbursement of an emergency withdrawal within the required time frame.

(d) Transfers to Individual Development Accounts of Family Members. At the request of a Project Participant, and with the written approval of a responsible official of the grantee, amounts may be paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

(i) The Participant's spouse, or

(ii) Any dependent of the Participant with respect to whom the Participant is allowed a deduction under section 151 of the Internal Revenue Code of 1986.

Note that such transfers may be made to individuals who in turn would become IDA project participants who would be able to use these funds for any of the Qualified Expenditures defined in Part I. Applicants are reminded of the limit of $4000 in Federal IDA matching contributions per household.

H. Cash Non-Federal Share Requirements

Applicants must submit firm commitments for at least one hundred percent of the requested OCS grant amount in cash non-Federal share. Public sector resources that can be counted toward the minimum required non-Federal share include funds from State and local governments, and funds from various block grants allocated to the States by the Federal Government provided that the authorizing legislation for these grants permits such use.

Note: Community Development Block Grant (CDBG) funds may be counted as non-Federal share; Community Services Block Grant (CSBG) FUNDS MAY NOT. With regard to State TANF funds, any State funds that comprise Maintenance Of Effort (MOE) funds under the TANF regulations may NOT be used as required non-Federal share under this Announcement. (But see discussion of Additional Matching Contributions in Section G (6)(b), above.)

To be considered for funding an Application must include a copy of an executed ''Non-Federal Share Agreement'', or a ''Statement of Commitment'' as described below, in writing executed by the Applicant and the organization or organizations providing the required non-Federal matching contributions, signed for the organization by a person authorized to make a commitment on behalf of the organization, and signed for the Applicant by the person signing the SF424. Such Agreement(s) must include: (1) A commitment by the organization to provide the non-Federal funds contingent only on the grant award; and (2) if the non-Federal share funds are not to be provided in one sum at the outset of the project, an agreement as to the schedule of the opening of Individual Development Accounts by the Applicant, and the schedule of deposits of non-Federal share funds by the organization to the project's Reserve Fund, such that the two schedules will together assure that there will be at all times in the Reserve Fund non-Federal matching contribution funds sufficient to meet the total pledges of matching contributions under the ''Savings Plan Agreements'' for all Individual Development Accounts then open and being maintained by the grantee during their lifetime and until their maturity as part of the demonstration project.

Thus, for example, if the provider of non-Federal share only agrees to a fixed schedule of deposits, this non-Federal share requirement can be met by the Applicant agreeing to a schedule for opening new accounts that will assure that new IDA accounts will only be opened when there are sufficient funds in the Reserve Fund to meet the total amount of matching contributions pledged under the ''Savings Plan Agreements'' during the lifetime of the accounts until their maturity.

Note: Applicants are reminded that as explained in Section C (Project and Budget Periods), above, grant funds may not be expended after the 5-year budget/project period. Consequently, Applicants should consider carefully the length of time participants will need to achieve their savings/investment goals, and at what point in the project they may wish to discontinue the opening of new accounts. At that point, all required non-Federal share funds will have to have been deposited in the Reserve Fund, along with grant funds.

As noted above, the Applicant may itself commit to providing some or all of the required cash non-Federal share, by including a Statement of Commitment, on applicant letterhead, signed by the official signing the SF 424 and countersigned by the Applicant's Board Chairperson or Treasurer, that the non-Federal matching funds will be provided, contingent only on the OCS grant award, and that non-Federal share deposits to the Reserve Fund and the opening of Individual Development Accounts will be coordinated so that new accounts will only be opened when there are sufficient funds in the Reserve Fund to cover the total matching contribution requirements of the Savings Plan Agreements.

With regard to Applicants which are State or local government agencies or Tribal governments, submitting jointly with tax exempt non-profit organizations, note that under Section G. Paragraphs (1) and (2), above, Reserve Funds are required to be established as in other projects.

Note: OCS has determined that the strict legislative limitations on the use of Federal grant funds and of an equal amount of non-Federal share (under the recent amendments to the AFI Act, at least 85% of each must go toward matching contributions to Individual Development Accounts) mean that important training, counseling and support activities, critical to the success of a project, may best be supported by additional resources, both of the applicant itself and mobilized by the applicant in the community. Consequently, Applicants are encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal, for support of project administration and assistance to Project Participants in obtaining skills, knowledge, and needed support services. (See Part III, Element V) Applicants are reminded that they will be held accountable for commitments of such additional resources even if over the amount of the required non-Federal match.

I. Preferences

In accordance with the provisions of the AFI Act, in considering an application to conduct a demonstration project under this Announcement, OCS will give preference to an application that:

(1) Demonstrates the willingness and ability of the applicant to select eligible individuals for participation in the project who are predominantly from

households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardian.

Note: Applications that target TANF eligible households will be deemed to have met this preference.

(2) Provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

(3) Targets individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities) that experience high rates of poverty or unemployment.

Note: Applications which target residents of Empowerment Zones, Enterprise Communities, Public Housing, or CDFI Fund-designated Distressed Communities will be deemed to have met this preference. (For information on CDFI Fund designation of Distressed Communities applicants may visit the CDFI Help Desk Website at: *http://www.cdfifundhelp.gov.)*

Each of these preferences will be valued at 2 points in the Application Review process. Applicants meeting these preferences will be awarded 2 points for each preference met. (Preferences (1) and (3) fall under Proposal Element II(a); Preference (2) falls under Proposal Element V(a)). In the case of a consortium of organizations operating programs funded through a lead agency, if a majority of the participating organizations meet these legislative preferences, the Application as a whole will be awarded these points.

J. Multiple Applications

Qualified Entities may submit more than one application for different demonstration projects and each such application will be reviewed competitively with all other applications submitted pursuant to this Announcement and may be funded in accordance with the reviewer ratings and other factors as described below in Part IV Sections D and E, Initial Screening and Consideration of Applications. Each such Application must be a request for a separate and distinct project, with completely distinct and separate budgets, project participants, and IDA's being funded; and each Application must fully comply with the provisions of this Part, and fully respond to all of the Program Elements and Evaluation Criteria set out in Part III, below.

K. Treatment of Program Income

As noted in Section G. Paragraph (1)(d), above, income generated from investment of unallocated funds in the Reserve Fund may be added to the funds already committed from the Reserve Fund to program administration, participant support, or evaluation data collection. However, once funds have been committed as matching contributions to Individual Development Accounts, then any income subsequently generated by such funds must be deposited proportionately to the credit of such accounts.

Note: No part of such income is to be considered as a Federal funds contribution subject to the $2000/$4000 limitations under Section G. Paragraph (6)(c), above.

L. Agreements With Partnering Financial Institutions/Statements of Policy

One of the most critical parts of a successful IDA project is the relationship between the project operator and a partnering financial institution, be it a bank or credit union. Not only does the financial institution provide the situs of the Individual Development Accounts, but it also represents for IDA holders their doorway to mainstream economic life: savings and checking accounts, ATM machines, payroll deduction savings, home mortgages, and the opportunity for credit repair, student and business loans, all within a framework of sound financial planning. Moreover, many banks see non-Federal share contributions to the project's Reserve Fund as sound investments which not only offer them tax deductions and Community Reinvestment Act (CRA) credit, but also large stable long-term deposits, and which introduce them to a whole new body of potential long-term clients with strong support networks, whose IDA investments will bring them into the market for home mortgages and business and student loans.

For all these reasons it is vitally important for applicants to develop strong and mutually supportive relationships with the financial institutions which will be their partners in carrying out the IDA project. Thus, every application submitted pursuant to this Announcement must include a copy(ies) of the agreement(s) entered into by the applicant with one or more insured Financial Institutions, in collaboration with which Reserve Funds and Individual Development Accounts will be established and maintained. (For applicant entities which are eligible Credit Unions or CDFI's, see Note at end of this Section, below.)

To be considered for funding, each Application submitted by other than an eligible Credit Union or Community Development Financial Institution must include a copy of an Agreement or Agreements with one or more partnering insured Financial Institutions which for the proposed project include(s) the provisions set out in Part III Element II(c), which state(s) that the accounting procedures to be followed in account management will conform to Guidelines (CFR Part 74) established by the Secretary.

(Note: Such regulations may be found as Attachment ''L'' to this Announcement.), and under which the partnering insured Financial Institution agrees to provide project data and reports as requested by the applicant. In the case of IDA's established as Trusts under Section G. Paragraph (4), above, the partnering financial institution must be a Qualified Financial Institution as defined in Part I Section F.(13). In the case of IDA's established as Custodial Accounts, the partnering financial institution must be insured and must meet the requirements of Section G. Paragraph (5), above, to the satisfaction of the Secretary. (For applications submitted by eligible Credit Unions or Community Development Financial Institutions (CDFI's) see Note below.)

The Agreement may also include other services to be provided by the partnering Financial Institution that could strengthen the program, such as Financial Education Seminars, favorable pricing or matching contributions provided by the Financial Institution, and assistance in recruitment of Project Participants. Strong and complete Agreements with financial institutions will be recognized in the application review process under Sub-Element II(c) of the application Evaluation Criteria under Part III, below.

Note: In the case of applications submitted by eligible Credit Unions or Community Development Financial Institutions, where the Reserve Fund and IDA accounts are to be held by the applicant Institution itself, the applicant must submit, in lieu of a Financial Institution Agreement, a Statement of Policy, approved by its Board of Directors and attested to by its Chairperson and Chief Financial Officer, which meets the requirements set forth in this section (L.) and in Part III Sub-Element II(c). This Statement of Policy will be considered in the application review process under Sub-Element II(c). Where such applicants are proposing the establishment of Reserve Fund(s) or IDA's in other partnering Financial Institutions, they must submit as part of their applications copies of Agreements with such Partnering Financial Institution(s) in accordance with this section.

M. Evaluation

To fulfill the legislative requirement for evaluation of the Assets for Independence Demonstration Program, the Secretary has contracted with Abt Associates, Inc., in Cambridge, Massachusetts, to carry out the required evaluation. OCS and ACF's Office of

Planning, Research and Evaluation (OPRE) have worked together with the contractor in the development of an evaluation design whose implementation got underway in the Spring of 2001.

Section 414 of the AFI Act stipulates that in evaluating any demonstration project under the AFI Act, the research organization (Abt Associates) shall, before, during and after the project, obtain such quantitative data as are necessary to evaluate the program thoroughly. To this end OCS and its technical assistance contractor, PeopleWorks, Inc., have worked with the ACF Office of Planning, Research and Evaluation (OPRE) and the research organization to develop a reporting format for AFIA grantees, and hope to make available to all grantees an Asset Development Information System to facilitate the maintenance, collection, verification and reporting of the data. In addition, Section 414 directs that the research organization shall develop a qualitative assessment, derived from sources such as in-depth interviews, of how asset accumulation affects individuals and families.

Grantees in the Assets for Independence Demonstration Program are required to cooperate with the OCS contractor's nationwide evaluation of IDA projects. As one aspect of this cooperation, grantees are required by Section 407 (b) (1) and (3) the AFI Act to spend not less than two percent (but no more than fifteen percent) of the Federal grant monies to provide the research organization evaluating the demonstration project under section 414 with such information with respect to the demonstration project as may be required for the evaluation. They are also strongly urged to use a data collection/tracking and reporting software approved by OCS (i.e., either the ''MIS IDA'' system, developed by the Center for Social Development at Washington University in St. Louis or a comparable, compatible system such as the Asset Development Information System being considered by OCS. It should be noted that the MIS IDA system does not calculate interest payments to IDA accounts as required by the AFI Act. Nor does it provide for collection of much of the project information that the AFI Act requires both for grantee reports and the program evaluation. However, PeopleWorks, Inc. has worked with SPSS, Inc. to develop two interim software packages which are now available, one a ''bridge to MIS IDA'' package and the other an ''Interest Rate Calculator,'' to deal with these problems on a temporary basis. (See Part III, Element IV, proposal review criteria for applicant's plan for data collection, reporting and evaluation-related activity.)

N. Support for Noncustodial Parents

The Office of Community Services and the Office of Child Support Enforcement (OCSE) both in the Administration for Children and Families, signed a Memorandum of Understanding (MOU) to foster and enhance partnerships between OCS grantees and local Child Support Enforcement (CSE) agencies. (See Attachment M for the list of CSE State Offices that can identify local CSE agencies) In the words of the MOU:

> The purpose of these partnerships will be to develop and implement innovative strategies in States and local communities to increase the capability of low-income parents and families to fulfill their parental responsibilities. Too many low-income parents are without jobs or resources needed to support their children. A particular focus of these partnerships will be to assist low-income, noncustodial parents of children receiving Temporary Assistance for Needy Families to achieve a degree of self-sufficiency that will enable them to provide support that will free their families of the need for such assistance.

Accordingly, a rating factor and a review criterion have been included in this Program Announcement which will award two points to applicants who have entered into partnership agreements with their local CSE agency to provide for referrals to their project in accordance with provisions of the OCS–OCSE MOU. (See Part III, Evaluation Criteria 7.)

Part III. The Project Description, Program Proposal Elements and Review Criteria

A. Purpose

The project description provides the major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

B. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, instructional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be recruited to the IDA program, how many accounts are projected to be opened, what qualified expenses are expected to be achieved, and how they will assist participants to move towards self-sufficiency.

E. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of accounts opened.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or,* by providing a copy of the currently valid IRS tax exemption certificate, *or,* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Budget and Budget Justification

Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) (currently set at $100,000.) Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget

and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

H. Non-Federal Resources

Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

I. Evaluation Criteria

Proposal Elements and Review Criteria for Applications

Each application which passes the Initial OCS Screening, as described in Part IV, Section D, below, will be assessed and scored by three independent reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points, and for each application will be the average of the scores of the three reviewers.

The competitive review of Assets for Independence Demonstration Program proposals will be based on the degree to which applicants:

(1) Incorporate each of the Program Elements and Sub-Elements below into their proposal narratives, so as to describe convincingly a project that will develop new asset accumulation opportunities for lower-income working families, through creation of IDA accounts and the provision of matching contributions, economic literacy training, and other supportive services, that can lead to a transition from dependency to economic self-sufficiency through the accumulation of assets and the pursuit of activities requiring one or more qualified expenses;

(2) Adhere to the requirements in Part II, above, and include the required program activities and agreements set forth in that Part; and,

(3) Commit to cooperation with the nationwide evaluation of the demonstration projects, and provide for the collection and validation of relevant data to support the national evaluation, being carried out by the Abt Associates under contract with ACF, of the project design, implementation, and outcomes of this Demonstration Program.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Where applications have project narratives (excluding Project Summaries, Tables of Contents, Budget Justifications and Appendices) of more than 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side only the first 30 pages will be reviewed for funding.

Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

OCS seeks to learn from the application why the project is important or necessary, what activities will be carried out, and why and how the project as proposed is expected to lead to significant permanent and measurable results in individual and family economic self-sufficiency through economic literacy and accumulation of assets. Applicants are urged to design and present their project in a way that makes clear the cause-effect relationship between what the project plans to do and the results it expects to achieve. The application should begin with a brief summary, as described in Part VI Section A, below (which will not be counted as part of the 30-page project narrative).

Project descriptions are evaluated on the basis of substance, not length. All pages should be numbered and a table of contents should be included for easy reference. For each of the Project Elements or Sub-Elements below there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that the overall Project Narrative must not be longer than 30 pages.

Evaluation Criteria 1: Organizational Profiles

Element I. Organizational Experience and Administrative Capability; Ability To Assist Participants (0 to 20 Points)

Criterion: The capability and relevant experience of the applicant, its staff, and its partners and collaborators in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project. Applicants should include their experience and capability in providing supportive services to TANF recipients and other low income individuals and working families seeking to achieve economic stability and self-sufficiency; and in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through economic literacy education and the accumulation of assets.

Experience: In this section, applications should briefly cite a few specific, concrete examples of successful programs and activities, with accomplishments, with which applicant has been involved which have contributed to its experience and capability to carry out the proposed project. This should include:

- Experience in working with the target or similar populations;
- Collaborative programming and operations which involve financial institutions; and
- Financial planning, budget counseling, educational guidance, preparation for home ownership, and/or self-employment training.

Agency Management Commitment

- Identify applicant agency executive leadership and briefly describe their involvement in the proposed project;
- Provide assurance of their commitment to its successful implementation. (This can be achieved by a statement or letter from agency executive leadership which may be included in the Appendix, and which should note and justify the priority that this project will have within the agency *including* the facilities and resources that it has available to carry it out.)

Qualifications, experience, capacity and commitment of the key staff person(s) who will administer and implement the project:

- Identify the individual staff person(s) who will have the most responsibility for managing the project, coordinating services and activities for participants and partners, and for achieving performance targets.
- Indicate the amount of time (in FTE) each will be expected to devote to

the project and briefly describe their roles and responsibilities;

• Include resume or resumes of key project personnel in the Appendix. (The person identified as Project Director should have supervisory experience, experience in working with financial institutions and budget related problems of the poor, and experience with the target population);

• Include in the Appendix the Position Description(s) for key project staff who have not yet been identified.

Roles, responsibilities, and experience of any other organizations that will be collaborating with the Applicant to assist and support Project Participants in the pursuit of their goals under the project. Supporting documentation concerning these partnering agencies and their written commitment to participation in the project should be included in the Appendix to the proposal.

Where the Applicant is applying as the lead agency for a consortium of partnering organizations, each of these organizations should be briefly described in this section of the Project Narrative; and background materials citing their relevant experience and staff capabilities should be included in the Appendix. In such cases the Applicant should document its capability and experience in managing such consortia, and the roles and responsibilities of all participating agencies should be clearly set forth in Partnering Agreements between the Applicant and each of the member organizations. Copies of the Agreements should be included in the Appendix, and the roles and responsibilities clearly explained in Element II(b), Project Design, and reflected in the Work Plan under Element II(d).

It is suggested that applicants use no more than 5 pages for this sub-Element, not counting actual resumes or position descriptions, which should be included in an Appendix to the proposal, or background materials on consortium members (if any) and other collaborating agencies, supportive materials, and, where applicable, Partnering Agreements with members, which should also be included in the Appendix.

Evaluation Criteria 2: Approach I

Element II. Sufficiency of the Project Theory, Design, and Plan (0–45 Points)

Criterion: The degree to which the project described in the application appears likely to result in the establishment of a workable, fiscally sound project that will provide a structure of incentives and supports for TANF eligible households and other working families of limited means that will enable them to increase their economic self sufficiency through economic literacy training and asset accumulation for one or more ''qualified expenses''.

OCS seeks to learn from the application why and how the project as proposed is expected to establish the creation of new opportunities for asset accumulation by eligible individuals and families that can lead to significant improvements in individual and family self-sufficiency through activities requiring one or more qualified expenses: for post-secondary education, home ownership, and/or qualified business capitalization.

Applicants are urged to design and present their project, pursuant to the following sub-elements, in terms of a conceptual cause-effect framework that makes clear the relationship between what the project plans to do and the results it expects to achieve.

Sub-Element II(a)(1). Description of Target Population, Analysis of Need, and Project Assumptions (0–6 Points)

Target population and area:

• Precisely identify the target population(s) to be served.

• Identify and briefly describe the geographic area to be impacted.

• Cite (with source of data) the percentage of residents of that target area who are low-income individuals, who are TANF recipients, as well as the unemployment rate, and other data that are relevant to the project design. **Note:** Both the poverty rate and unemployment rate of the target community(s) are needed to be set forth in the Application so that its eligibility for the legislative preference under Sub-Element II(a)(2) may be determined (see below).

The project design or plan should begin with identifying the underlying assumptions about the program. These are the beliefs on which the proposed program is built. They should begin with assumptions about the strengths and needs of the population(s) to be served; about how the accumulation of assets will enable project participants to build on those strengths in their quest to achieve self-sufficiency; and about what anticipated needs of the participants could be barriers to that achievement.

In other words, the underlying assumptions of the program are the applicant's analysis of the participant strengths and potential to be supported and their needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those strengths and needs to achieve the desired result. A strong application is based upon a clear description of the strengths, opportunities, needs and problems to be supported and addressed, and a persuasive understanding of the nature of the opportunities and causes of the problems.

Thus the application should include a brief discussion of the following:

• The identified strengths and needs of the population(s) to be served;

• How the accumulation of assets will enable project participants to build on those strengths in their quest to achieve self-sufficiency;

• What anticipated needs of the participants could be barriers to that achievement.

• Any identified personal barriers to employment, job retention and greater self-sufficiency faced by the population to be targeted by the project (for example, illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for childcare, lack of suitable clothing or equipment, or poor self-image);

• Any identified community systemic barriers which the applicant will seek to overcome (for example, lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services for employment service, child care, job training; high incidence of crime; lack of housing; inadequate health care; or environmental hazards).

• The personal and family services and support needed by project participants which will enhance job retention and advancement, so as to assure continued ability to save from earned income, and which will also help to assure that benefits attainable through asset accumulation are not diverted by crises beyond the participants' control which would lead to emergency withdrawals.

The applicant should thus be prepared to demonstrate that the proposed project activities will provide participants with realistic prospects for making the investments needed to acquire the assets which are the goal of the IDA.

Where applicant is the lead agency for a group or consortium of organizations, this narrative should very briefly summarize the location, character, and unemployment and poverty status of the different target populations. More detailed information for each of the participating organizations should be included in the Appendix to the Application.

Sub-Element II(a)(2). Description of Target Population, Analysis of Need, and Project Assumptions—Legislatively Mandated Preferences (Weight of 0–4 Points in Proposal Review)

Note: See the legislative preferences set forth in Part II Section I (Preferences), above.

1. Applicant demonstrates the willingness and ability to select individuals for participation in the project who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardians. Applications which include a targeting of TANF eligible households will be deemed to have met this preference, described in Part II, I.(1.) (Weight of 0–2 points in proposal review)

2. Applicant targets individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities, public housing developments, Empowerment Zones and Enterprise Communities) that experience high rates of poverty or unemployment. Applicant must cite data and source of data to demonstrate eligibility for this preference. (Applications which target residents of Empowerment Zones, Enterprise Communities, Public Housing, or CDFI Fund-designated Distressed Communities will be deemed to have met this preference, described in Part II, I.(3.) (Weight of 0–2 points in proposal review)

In the case of a consortium of organizations operating programs funded through a lead agency, if a majority of the participating organizations meet these legislative preferences, the Application as a whole will be awarded these points.

It is suggested that applicants use no more than 5 pages for this Sub-Element, not including any more detailed information about target populations or communities, which should be included in the Appendix.

Sub-Element II(b). Project Approach and Design: Interventions, Outcomes, and Goals (0–15 Points)

The Application should outline a plan of action which describes the scope and detail of the proposed project activities which will be undertaken, and explains how they will contribute to the achievement of project goals. This sub-element should begin with a concise statement of project goals, which should include:

- The number of IDAs that are proposed to be established for each of the ''Qualified Expenses'' under the AFI Act (first home, post secondary education, business capitalization);
- The projected monthly savings by AFI-eligible IDA holders and the planned rate of matching contributions; (Projected savings may vary depending on participant ability to pay.)
- The projected savings and asset goals of the AFI-eligible participants. (It is recognized that these projections may be revised during the course of the project, based on actual experience of the participants.); and
- Demonstration that projected savings goals have a true relation to the ability of the Participant to save and to the value or cost of the ''Qualified Expense'' for which the IDA is to be used, be it housing, post secondary education, or business capitalization.

Next, the Applicant should present a clear and straightforward description, from the point of view of the Project Participant, of just how the proposed IDA Project will operate. This description should take an eligible member of the target population through project activities from recruitment through the payment for the ''Qualified Expense'' (and beyond, if appropriate). It is suggested that the description generally follow the outline below, plus any additional activities that the Applicant proposes to undertake as part of its project:

(1) How/where does the potential participant learn information about the Project that will excite his/her interest? (*Recruitment*)

(2) Once interested, how, when, by whom, and on what basis is the recruit selected to participate in the project? (*Selection*)

(3) How and when and with what assistance (Case Management? Family Development?) does the new participant make decisions concerning the amount of weekly or monthly savings and the selection of ''Qualified Expense''? Or is this part of the Selection Process? (*Consultation*)

(4) When and where and with whom does the Participant reach agreement on and sign a ''Savings Plan Agreement''? (Include here a brief discussion of the provisions of the Agreement, or refer to a sample provided in the Appendix.) (*Savings Plan Agreement*)

(5) Where, when and how does the Participant actually open his/her IDA account with the Insured Financial Institution? Where is the Institution in relation to the Participant's home/place of work? How does the Participant get to the Institution? (Include here a brief discussion of the role of the Financial Institution in account management, data collection and reporting, and any other services it will provide, referring to copies of the agreement(s) with the Financial Institution(s) in the Appendix.) (*Opening of the IDA/Role of the Financial Institution*)

(6a) How and where will participant make savings deposits? In person? By mail? Through payroll deduction? (*Savings Deposits*)

(6b) What happens if a scheduled deposit is missed? Will the participant be sent a post card? Receive a supportive phone call? (*Delinquency*)

(7a) Where and when and from whom does the participant receive ''Economic Literacy'' or ''Budgeting'' training, and do childcare and transportation need to be provided? (*Training and Support*)

(7b) Where and when and from whom does participant receive Credit Repair Services if they are needed; and are there ways to escape from, or avoid Predatory Lenders? (*Credit Repair*)

(8a) Where and when and from whom does the participant receive needed support to remain on the job with opportunity for advancement (So as to assure continued savings from earned income)? (*Post Employment Support Services*)

(8b) Where and when and from whom does the participant receive emergency services so as to avoid having to make Emergency Withdrawals? (*Crisis Intervention*)

(9) Where and when and from whom does the participant receive ''Qualified Expenditure'' training related to home ownership, pursuit of educational goals, or business plan development and business management? (*Qualified Expenditure Support*)

(10) When the IDA savings/match goals have been achieved, where, when and how does the participant make or arrange withdrawals to support the ''Qualified Expenses''? (*Withdrawals*)

Finally, and following the above description, the Applicant should explain how the proposed project activities will result in outcomes which will build on the strengths of the Program Participants and assist them to overcome the identified personal and systemic barriers to achieving self-sufficiency:

What will the project staff do with the resources available to the project;

How will what they do (interventions) assist project participants to accumulate assets in Individual Development Accounts and use those assets for ''Qualified Expenses'' in a manner that will help lead them to self-sufficiency; and

What personal and family service and support will be provided to project participants that will enhance job retention and advancement, so as to assure continued ability to save from

earned income, and which will also help to assure that benefits attainable through asset accumulation are not diverted by crises beyond the participants' control which would lead to emergency withdrawals.

In this description the applicant should discuss all of the planned activities and interventions, including those supported by other available resources or partnering organizations, and should explain the reasons for taking the approaches proposed. The description should give a clear picture of how the project as a whole will operate from day to day, including the recruiting, financial, program support, and data collection responsibilities of the applicant and any partners in the project, and just how they will interact with the financial institutions and other participating agencies.

Where the Applicant is a lead agency for a group or consortium of organizations, the role of each must be clearly defined in this section of the application. In such cases Applicants should attach copies of signed Partnering Agreements with each of the member organizations setting forth the roles and responsibilities of each. (See Element I and Part II Section B.(3) above.)

It is suggested that applicants use no more than 9 pages for this Sub-Element, not including copies of agreements with financial institutions, partnering agencies or organizations, or sample ''Savings Plan Agreement'', which should be in an Appendix.

Sub-Element II(c). Financial Institution Agreement/Statement of Policy (0–10 Points)

Note: In the case of applications submitted by eligible Credit Unions or Community Development Financial Institutions, where the Reserve Fund and IDA accounts are to be held by the applicant Institution itself, the applicant must submit, in lieu of a Financial Institution Agreement, a Statement of Policy, approved by its Board of Directors and attested to by its Chairperson and Chief Financial Officer, which sets forth the provisions listed under this Sub-Element, and which will be considered in like manner in the competitive review process. Where such applicants are proposing the establishment of Reserve Fund(s) or IDA's in other partnering Financial Institutions, they should submit as part of their applications copies of Agreements with such Partnering Financial Institution(s) in accordance with this Sub-Element. It is suggested that applicants need not include discussion of these Agreements/Statements of Policy in their Proposal Narrative, but should only identify the Financial Institution(s) and reference the Agreement/Statement of Policy as included in an Appendix to the Application.

Applicants other than eligible Credit Unions or CDFI's must identify the Qualified Financial Institution(s) with which they are partnering in the development and implementation of its IDA Project, and all applicants must include in an Appendix a copy of a signed Agreement between the Applicant and the Financial Institution(s), or, in the case of eligible Credit Unions or CDFI's, a Statement of Policy, which sets forth:

(1) That the project's Reserve Fund will be established in the Financial Institution;

(2) That its management will conform to the requirements of the AFI Act (see PART II Section G.(1) above);

(3) The rate of interest to be paid on amounts in the Reserve Fund;

(4) That IDA accounts will be established in the Financial Institution through written governing instruments in accordance with the requirements of Part II, Section G. Paragraph (4), sub-paragraphs (a) through (g), and Paragraph (5), above, including the requirements for deposits (by cash, check, money order or electronic transfer) and withdrawals (*signature of the account holder and of a responsible official of the project grantee required*);

(5) How, when, and where participant deposits will be made;

(6) How and when matching contributions will be made (e.g. in a parallel account);

(7) The rate and frequency of interest payments on accounts, including matching contributions;

(8) That the accounting procedures to be followed in account management will conform to the Guidelines established by the Secretary as set forth in Attachment ''L'' to this Announcement;

(9) The data and reports that will be furnished to the grantee concerning the Reserve Fund and IDA accounts;

(10) The Non-Federal Share contribution, if any, being made by the Financial Institution for deposit in the Reserve Fund, and the schedule of deposits of such contribution; and

(11) Other services to be provided by the Financial Institution(s) that could strengthen the project, such as Financial Education Seminars, favorable pricing on fees, out-stationing of services in community facilities, or assistance in recruitment of Project Participants.

Agreements/policies which meet the basic requirements of paragraphs (1) through (9), above will be awarded up to eight (8) points in the competitive review process. To be awarded a higher score Agreements/Statements of Policy must include some provisions from those included in paragraphs (10) and (11).

As noted above, the applicant need only identify the partnering Financial Institution(s) under this Sub-Element, and reference the Agreement(s) or Statement of Policy in the Appendix to the Application.

Sub-Element II(d). Work Plan, Time Lines, Projections, Management Plan (0–10 Points)

For this Sub-element, applicants should provide the information described below in items A and B of this Sub-element.

A. Quantitative Quarterly Projections of the Following Information (Which May Be Presented in the Form of a Gant Chart or Table)

- The projected number of participants to be enrolled in each quarter;
- The number of Individual Development Accounts projected to be opened in each quarter for each of the ''Qualified Expenses'', with an estimate of expected attrition among participants;
- The number and amount of projected deposits in each quarter;
- A projected schedule of IDA completions and qualified expense payments, which should reflect the expected attrition noted above;
- A projected schedule of financial literacy training classes to be presented;
- The number and types of other support services to be provided to participants;
- A projected schedule of ''asset-related training'' to be provided participants; and
- Key project tasks, with the timelines and major milestones for their implementation.

Where the Applicant is a lead agency for a group or consortium of organizations, this information should be broken out for each of the member organizations. Applicant may be able to use a time line chart to convey this aspect of the work plan in minimal space.

Note: Applicants should make sure that these projections relate accurately to the amount of grant funds requested and rates of matching contributions that are planned for IDA's. In other words, applicants should project the number of IDA accounts that will be matched by the grant funds that will be available to the project, given the proposed maximum matching contribution (which cannot be more than $2000 in Federal grant funds). Thus:

- Applicants should not project a greater number of IDA accounts than that number that can be matched by the grant funds that will be available to the project.

• Applicants should also be aware that OCS funds awarded pursuant to this Announcement will be from FY 2002 funds and may not be expended after the end of the five-year Project/Budget Period to support administration of the project or matching contributions to Individual Development Accounts which may be open at that time.

• Consequently, Applicants should consider carefully the length of time participants will need to achieve their savings goals and at what point in the project they should discontinue the opening of new accounts.

• Applicants must include a statement of assurance that in every case an IDA account will only be opened for a participant when there are in the project's Reserve Fund sufficient funds for payment of all promised matching contributions to that account during its lifetime until its maturity in the course of the demonstration project.

B. Management Plan or Chart Showing the Following Information

• The responsibilities of the applicant agency, key personnel, and all partnering agencies and consortium members (where applicable), with

• An indication of who will be performing various tasks such as recruiting, training, economic literacy training, and support activities.

(This management plan or chart should be included in the Appendix to the Application.)

It is suggested that applicants use no more than 3 pages for this Sub-Element, not counting the management plan/chart, which should be included in the Appendix.

Evaluation Criteria 3: Budget and Budget Justification

Element III. Appropriateness of Budget and Proposed Use of Cash and In-Kind Resources (0–5 Points)

Criteria: Completeness of the Budget Justification, and the degree to which a description of the allocation of both cash and in-kind resources available to the project (including any income generated for the project by the Reserve Fund) demonstrates a thoughtful plan that reflects the needs of Project Participants and the responsive activities and interventions to be undertaken by the Applicant and its partners.

Every application must include a Budget Justification, placed after the Budget Forms SF 424 and 424A, explaining the sources and uses of project funds, and completed in accordance with instructions found in Section G of this Part, above. The Budget Justification will not be counted as part of the Project Description subject to the 30-page limitation. The Budget Justification should include the following:

• Brief but thorough description of how all of the resources available to the Project will be employed to carry out the Work Plan described in Element II, including those training elements and support services designed to help assure participant success in meeting their savings commitments and their chosen ''qualified expense'' use of their Individual Development Account assets.

• In the budget forms and supporting Budget Justification, Applicants must clearly distinguish between AFI Act/OCS grant funds and other funds, and between cash and in-kind resources described. (See detailed instructions in Part V (B), below.)

• Applicant should provide sufficient detail for all costs, showing how amounts were computed, to substantiate the need, cost, and use of proposed expenditures.

• The budget must clearly reflect that the grantee will use at least 2% (but not more than 15%) of grant funds, to provide the research organization (Abt Associates) with which ACF has contracted to evaluate the Assets For Independence Demonstration Program with such information as may be required for the evaluation.

• The budget must clearly reflect that at least 85% of the Federal grant funds, and an equal amount of the required cash non-Federal share funds, shall be used as matching contributions to participants' AFI-eligible IDA accounts.

As noted above, the Budget Justification will not be counted as part of the Project Description subject to the 30-page limitation.

Evaluation Criteria 4: Approach II

Element IV. Project Data: Adequacy of Plan for Collecting, Validating and Providing Project-Related Data for Management Information, Reporting, and Evaluation Purposes (0–5 Points)

Criteria: Adequacy of the plan for collecting, validating and providing relevant, accurate and complete data for internal management information, statutory reporting and project evaluation purposes; and clear expression of a commitment to cooperate with the statutorily mandated evaluation of the national Assets for Independence Demonstration Program.

Note: Under the AFI Act project grantees are required to use at least 2%—but not more than 15%—of grant funds to provide the research organization (Abt Associates) evaluating the demonstration project with such information with respect to the demonstration project as may be required for the evaluation.

Although grantees of the Assets for Independence Demonstration Program are not required to have their own project evaluation, they are required to cooperate with, and furnish project data to the statutorily mandated evaluation of the national Assets for Independence Demonstration Program carried out by the independent research organization under contract to ACF (Abt Associates). Proposal review will include consideration of the adequacy of the applicant's plan for collecting, validating and providing relevant, accurate and complete data, and the applicant's plan for internal management information, statutory reporting and OCS national IDA program evaluation purposes.

This Element requires the Applicant to provide the following:

• An *explicit statement of applicant's agreement* to cooperate with the evaluation of the national program being carried out by Abt Associates;

• A brief explanation of applicant's perception of what that cooperation would entail;

• A well-thought-out plan for collecting, validating and reporting or providing the necessary data in a timely fashion (The Applicant is also encouraged to identify the kinds of data it believes would facilitate the evaluation, reporting, purposes); and

• An *explicit statement that the applicant agrees to use the ''MIS IDA'' information system software* developed by the Center for Social Development, *or a comparable and compatible Asset Development Information System,* now in development, which OCS hopes to provide to grantees for the maintenance, collection, and transmission of data from the proposed project.

Note: To attain a maximum score for this Element, the Applicant must state its agreement to use the ''MIS IDA'' or comparable/compatible information system approved by OCS.

Applicants are urged to carry out an ongoing assessment of the data and information collected as an effective ''process'' management/feedback tool in implementing their project. If the Applicant anticipates such an undertaking, the plans should be briefly outlined here.

It is suggested that applicants use no more than 2 pages for this Element.

Evaluation Criteria 5: Non-Federal Resources

Element V. Commitment of Resources (Total of 0–15 Points)

Sub-Element V(a). Proportion of Public/Private Required Non-Federal Matching Contributions (0–2 Points)

Criterion: Whether a proportionately greater amount of the committed required cash non-Federal share funds are from the private sector as opposed to public (government) sources.

In accordance with the legislative preference set forth in Part II Section I(2) (Preferences), above, applications which provide a commitment of *required cash non-Federal funds* with a proportionately greater amount of such funds committed from private sector as opposed to public sources will receive 2 points under this Element.

Applicants are reminded that as noted in Part II Section H. (Cash Non-Federal Share Requirements), where the Applicant is itself providing any of the required cash non-Federal share, it must include in the Appendix a statement of commitment, on applicant letterhead, signed by the official signing the SF 424 and countersigned by the Applicant's Board Chairperson or Treasurer, that:

- The non-Federal matching funds will be provided, contingent only on the OCS grant award, and
- Non-Federal share deposits and the opening of Individual Development Accounts will be coordinated so that new accounts will only be opened when there are sufficient funds in the Reserve Fund to cover the total matching requirements of the Savings Plan Agreements for those accounts during their lifetime until they reach maturity.

Sub-Element V(b). Availability of Additional Resources (0–13 Points)

Criterion: The extent to which additional resources (beyond the required amount of direct funds from non-federal public sector or private sources that are formally committed to the project as non-Federal Share) will be available to support those activities and interventions identified in Project Approach and Design [sub-Element II(b)], such as economic literacy classes, ''qualified expense'' asset-related training, counseling, case management, post-employment support services, and crisis intervention.

As noted below in Part IV, Paragraph D Initial OCS Screening, the only applications which will be considered for competitive review are those which include written documentation of a commitment, contingent only on award of the OCS grant, from the provider(s) of non-Federal share, in cash as distinguished from in-kind, of at least the amount of the total Federal grant requested.

OCS has determined that in light of the strict legislative limitations on the use of Federal grant funds and of the minimum required non-Federal share (at least 85% of each must go toward matching deposits in Individual Development Accounts), important training, counseling and support activities, critical to the success of a project, can best be supported by additional resources, both of the applicant itself and partners, and from the community at large.

Additional resources may be existing programs of the applicant or a project partner, such as Family Development, Economic Literacy classes, or Small Business Training, in which Project Participants are enrolled as part of their efforts to achieve self-sufficiency.

In order to receive points in the review process under this sub-Element, the applicant must:

- Identify those additional resources, cash and in-kind, which will be dedicated to support of those activities and interventions identified as part of the Project Approach and Design in sub-Element II(b) (including economic literacy classes, training, counseling, case management, post-employment support services, and crisis intervention; and any staff data collection and verification activities described in the budget (Element III); and
- Document the commitment of such resources to the project in writing and submit as an Appendix to the Application.

Note: Because such additional resources are not part of the legislatively mandated cash non-Federal share requirement, these additional resources may be of Federal or non-Federal origin, public or private, in cash or in-kind. Applicants are reminded that they will be held accountable for commitments of such additional resources even if over the amount of the required non-Federal share.

It is suggested that no more than 3 pages be used for this Element, not including non-Federal Share Agreements, assurances, documents of commitment, partnership agreements, or Memoranda of Understanding, which should be put in an Appendix to the proposal.

Evaluation Criteria 6: Results or Benefits Expected

Element VI. Significant and Beneficial Impacts/Critical Issues or Potential Problems (0–8 Points)

Criteria: The extent to which proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead TANF eligible households and other eligible individuals and working families toward economic self-sufficiency through economic literacy education and accumulation of assets; and the extent to which applicant convincingly explains how the project will meet any critical issues or potential problems in achieving these results.

For this element, Applicants should:

- Set forth their realistic goals and projections for attainment of these and other beneficial impacts of the proposed project;
- Demonstrate that projected savings goals have a true relationship to the ability of the participant to save the projected amounts and to the value or cost of the ''Qualified Expense'' for which the IDA is to be used;
- Quantify anticipated results in terms of
- The number of AFI-eligible Individual Development Accounts opened,
- The rate of growth of individual savings among participants,
- The number and size of withdrawals for each of the three ''Qualified Expenses'', and
- The impact of the acquisition of these assets on the participants' movement toward self-sufficiency, *and explicitly address:*
- Critical issues or potential problems that might affect the achievement of project objectives, and
- An explanation of how they would be overcome, and how the objectives will be achieved notwithstanding any such problems.

It is suggested that no more than 3 pages be used for this Element.

Evaluation Criteria 7: Support for Noncustodial Parents

Element VII. Agreements With Local Child Support Enforcement Agencies (0–2 Points)

As explained in Part II Section N, applicants who have entered into partnership agreements with local Child Support Enforcement (CSE) Agencies to develop and implement innovative strategies to increase the capability of low-income parents and families to fulfill their parental responsibilities; and specifically, to this end, to provide for referrals to the funded projects of identified income eligible families and noncustodial parents economically unable to provide child support, will also receive special consideration.

To receive the full credit of two points, applicants should include as an

appendix to the application, a signed letter of agreement with the local CSE Agency for referral of eligible noncustodial parents to the proposed project.

It is suggested that applicants need only refer to the relevant appendix for this Element.

Part IV. Application Procedures

A. Application Development/ Availability of Forms

In order to be considered for a grant under this program announcement, an application must conform to the Program Requirements set out in Part II and be prepared in accordance with the guidelines set out in Part III, above, with a project narrative that is responsive to the Program Elements and Review Criteria there set out. It must be submitted on the forms supplied in the attachments to this Announcement and in the manner prescribed below. Attachments A through I contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and Parts IV and V of this Announcement contain all the instructions required for submittal of applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT:** at the beginning of this announcement. In addition, this Announcement is accessible on the Internet through the OCS website for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/*—click on ''Funding Opportunities''.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, the Certification Regarding Environmental Tobacco Smoke, and debarment regulations set forth in Attachments G, H, and I.

Part III contains instructions for the substance and development of the project narrative. Part V contains instructions for completing application forms. Part VI, Section A describes the contents and format of the application as a whole.

B. Application Submission

(1) Number of Copies Required

One signed original application and two copies must be submitted at the time of initial submission. (OMB 0976–0139). Two additional optional copies would be much appreciated by OCS to facilitate the processing and third party review of applications.

(2) Deadline

Applications shall be considered as meeting the announced deadline of June 14, 2002 if they are received on or before the deadline date. Mail service in the Washington, DC area was disrupted a few months ago and for several weeks, all mail deliveries to the Administration for Children and Families stopped. Regular deliveries have resumed, but delays continue due to the irradiation process. It may be some time before the situation corrects itself. Consequently, it is strongly recommended that applicants avail themselves of overnight/express delivery such as Federal Express or United Parcel Service to submit their applications. Applications received after the due date will not be accepted for consideration in the first round of proposal reviews. If there is an insufficient number of acceptable applications in the first round of proposal reviews for OCS to fully expend available funds, a second round of applications will be accepted and reviewed, subject to the availability of funds, if received on or before August 5, 2002. Should this be the case, ACF will publish a timely notice to that effect in the **Federal Register**.

Applications submitted via overnight/ express delivery services should be addressed to the Administration for Children and Families, Office of Administration, Office of Grants Management, Division of Discretionary Grants, ''Attention IDA Program'', 901 D Street SW., Fourth Floor West, Washington, DC 20024.

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Administration, Office of Grants Management, Division of Discretionary Grants, Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: IDA Program''.

(As noted above, because of current delays in mail service, it is strongly recommended that applicants not use the U.S. Postal service for submission of applications. However, for any applicants that do so, mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Administration, Office of Grants Management, Division of Discretionary Grants, ''Attention: IDA Program'', 370 L'Enfant Promenade, SW., Washington, DC 20447.) ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

(3) Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition. As noted above, If there is an insufficient number of acceptable applications in the first round of proposal reviews for OCS to fully expend available funds, a second round of applications will be accepted and reviewed, subject to the availability of funds, if received on or before August 5, 2002. Should this be the case, ACF will publish a timely notice to that effect in the **Federal Register**.

(4) Extension of Deadlines

ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with ACF's Chief Grants Management Officer.

C. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by

Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate ''not applicable'' if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Administration, Office of Grants Management, Division of Discretionary Grants 370 L'Enfant Promenade, SW., 4th floor West, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment J to this Announcement.

D. Initial OCS Screening

Each application submitted under this program announcement will undergo a pre-review to determine that the application was received by the closing date and submitted in accordance with the instructions in this announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

Checklist

The following requirements must be met by all Applicants except as noted:

(1) The application must contain a signed Standard Form 424 ''Application for Federal Assistance'' (SF–424), a budget (SF–424A), and signed ''Assurances'' (SF 424B) completed according to instructions published in Part V and Attachments A, B, and C of this Program Announcement. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 30 letter-size pages, numbered, and typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (c.p.i.) or equivalent. Applications with project narratives (excluding Project Summaries and appendices) of more than 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding. The Joint Applicant Agreement (where applicable), non-Federal share agreement, Budget Narrative, Charts, exhibits, resumes, position descriptions, letters of support or commitment, Agreements with Financial Institutions and other partnering organizations, and Business Plans (where required) are not counted against this page limit, and should be in the Appendix. It is strongly recommended that applicants follow the format and content for the narrative described in the program elements and review criteria set out in part iii section I.

(3) Application should contain documentation of the applicant's (or joint applicant's) tax exempt status as required under Part II, Section B. No grants will be awarded to applicants that have not submitted such documentation.

(4) Application must include a copy of a ''Non-Federal Share Agreement'' or Agreements in writing executed with the entity or entities providing the required non-Federal matching contributions, signed by a person authorized to make a commitment on behalf of the entity and signed for the Applicant by the person signing the SF424. Such Agreement(s) must include: (1) A commitment by the organization to provide the non-Federal funds contingent only on the grant award; and (2) an agreement as to the schedule of the opening of Individual Development Accounts by the Applicant, and the schedule of deposits by the organization to the project's Reserve Fund, such that the two schedules will together assure that there will be at all times in the Reserve Fund non-Federal matching contribution funds sufficient to meet the total pledges of matching contributions under the ''Savings Plan Agreements'' for all Individual Development Accounts then open and being maintained by the grantee, through their lifetime and until maturity, as part of the demonstration project.

Where Applicants (or Joint Applicants) themselves are providing non-Federal share funding, then with regard to those funds the application must include an assurance, written on the Applicant's letterhead, signed by the person signing the SF424, and countersigned by the board Chairperson or Treasurer, that the required non-Federal share funds will be provided and that deposits and the opening of Individual Development Accounts will be coordinated so that new accounts will only be opened when there are sufficient funds in the Reserve Fund to cover the maximum matching requirements of the Savings Plan Agreements. (See Part II, Section H.)

Applicants are strongly encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal, for support of project administration and assistance to Project Participants in obtaining skills, knowledge, and needed support services. (See Part III—I Element V(b))

(5) All Applications other than those submitted by eligible Credit Unions or CDFI's must include a copy of an Agreement between the Applicant and one or more Qualified Financial Institutions, which includes the provisions set out in Part III—I, Element II(c), which states that the accounting procedures to be followed in account management will conform to Guidelines (45 CFR Part 74) established by the Secretary, and under which the partnering financial institution will agree to provide data and reports as requested by the applicant. **Note:** the Accounting Guidelines may be found under 45 CFR parts 74 and 92.

E. Consideration of Applications

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of the specific review criteria described and discussed in Part III, above. Applications will be reviewed and rated under the Program Elements and Review Criteria set forth in Part III Section I. The review criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The review

criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the review criteria and program elements within the context of this Program Announcement. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion by applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; the amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

Since non-Federal reviewers will be used for review of applications, Applicants may omit from the application copies which will be made available to the non-Federal reviewers, the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

Part V. Instructions for Completing Application Forms

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments A and B) as modified by the instructions set forth in Part III G., above, and the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. See the discussion of the Budget Justification in Part III Section I, Element III, above. **Note:** The Budget detail and Narrative Budget Justification should follow the SF 424 and 424A, and are not counted as part of the Project Narrative.

A. SF–424—Application for Federal Assistance (Attachment A)

Top of Page

Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant is a State, enter ''A'' in the box. If applicant is an Indian Tribe enter ''K'' in the box. If applicant is a non-profit organization enter ''N'' in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.602. The title is ''Assets for Independence Demonstration Program (IDA Program)''.

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

I—Individual projects under Priority Area 1.0

Item 13. Proposed Project—The project start date must begin on or before September 30, 2002; the ending date should be calculated on the basis of 60-month Project Period.

Item 15a. This amount should be no greater than $1,000,000 for applications under Priority Area 1.0, and in any case no greater than $1,000,000 less any previous AFIA grants awarded to the applicant.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the Project Period (60 months).

B. SF–424A—Budget Information—Non-Construction Programs (Attachment B)

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in Non-Federal entries.

Sections A, B, and C of SF–424A should reflect budget estimates for each year of the Project Period.

Section A—Budget Summary

You need only fill in lines 1 and 5 (with the same amounts)

Col. (a): Enter ''IDA Program'' as Item number 1. (Items 2, 3, 4, and 5 should be left blank.)

Col.(b): Catalog of Federal Domestic Assistance number is 93.602. Col. (c) and (d): not relevant to this program.

Column (e)–(g): enter the appropriate amounts in items 1. and 5. (Totals) Column e should not be more than $1,000,000 for applications under Priority Area 1.0, and in no case can it be more than the committed non-Federal matching cash contribution or more than $1,000,000 less any previous AFIA grants awarded to the applicant.

Section B—Budget Categories

(Note that the following information supersedes the instructions provided with the Form in Attachment C)

Columns (1)–(5): For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the full 5-year budget period. With regard to Class Categories, no less than eighty-five percent (85%) of OCS grant funds should be entered in ''h. Other'', representing the funds to be deposited in the Reserve Fund and which will be used to match participant contributions in IDA's. The balance of up to fifteen percent (15%) of OCS grant funds should be allocated to Object Class Categories in accordance with the instructions found in Part III Section G of this Announcement, and the requirements and limitations set out in Part II Section G(1)(b), above.

Columns 2, 3 and 4 are not relevant to this program.

Column 5: Enter not less than 85% of OCS grant funds for the five year budget by Class Categories under ''other'', showing a total of not more than $1,000,000 less any previous AFIA grants awarded to the applicant.

Section C—Non Federal Resources

This section is to record the amounts of ''non-Federal'' resources that will be used to support the project, including both the required cash non-Federal share, and the ''additional resources'' which will bring additional support to the project, which may be cash or in-kind, non-Federal or Federal. In this context, ''Non-Federal'' resources mean any and all resources other than the OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program or the Welfare-to-Work program, should be entered on these lines. Provide a brief listing of these ''non-Federal'' resources on a separate sheet and describe whether it is a grantee cost or a third-party cash or in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Non-Federal Resources program element. (Part III, Element V(b)

Note: Even though non-Federal resources mobilized may go beyond the amount required as the cash non-Federal share under the IDA Program, grantees will be held accountable for any such cash or in-kind contribution proposed or pledged as part of an approved application where the use of such funds falls within a Program Element/Proposal Review Criterion which formed the basis for the grant award. (See Part II, Section H. and Part III, Element V(b).

Sections D, E, and F may be left blank by Applicants under Priority Area 1.0.

As noted above and in Part VI, a supporting Budget Justification must be submitted providing details of expenditures under each budget category, with justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project.

C. SF–424B Assurances: Non-Construction Programs

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' (Attachment C) Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. (See Attachments D and E) Applicants must sign and return the certification with their applications. Applicants should note that the Lobbying Disclosure Act of 1995 has simplified the lobbying information required to be disclosed under 31 U.S.C. 1352.

Applicants must make the appropriate certification on their compliance with the Drug-Free Workplace Act of 1988 and the Pro-Children Act of 1994 (Certification Regarding Smoke Free Environment). (See Attachments G and H) By signing and submitting the applications, applicants are attesting to their intent to comply with these requirements and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. (See Attachment I) By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. Copies of the certifications and assurances are located at the end of this announcement.

Part VI. Contents of Application and Receipt Process

Application pages should be numbered sequentially throughout the application package, beginning with a Summary/Abstract of the proposed project as page number one; and each application must include all of the following, in the order listed below:

A. Content and Order of IDA Program Application: Checklist

1. A Project Summary/Abstract—brief, not to exceed one page, on the Applicant's letterhead (that will not be counted as a part of the Project Narrative/Description) and that includes the following information:

- A brief identification of the geographic area to be served, indicating poverty and unemployment rates, and the specific population to be targeted by the project;
- The amount of the grant requested;
- The name of partnering financial institution(s) and collaborating organizations (if applicable);
- The amount of required non-Federal match committed;
- The number of IDA accounts projected to be opened in the course of the Demonstration Project;
- The proposed rate of matching contributions, and the types and numbers of ''Qualified Expenses'' expected to be achieved by participants; and
- A brief narrative description of the project indicating any of its innovative aspects.

2. Table of Contents;

3. A completed Standard Form 424 (Attachment A) which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally; (**Note:** The original SF–424 must bear the original signature of the authorizing representative of the applicant organization);

4. A completed Budget Information-Non-Construction Programs (SF–424A) (Attachment B);

5. A Budget Justification, including narrative budget justification for each object class category included under Section B, as described in Part III, Program Element III;

6. Proof of current tax-exempt status of Applicant or Joint Applicant (See Part II B.) No grants will be awarded to applicants that have not submitted such documentation;

7. *A project narrative,* limited to 30 pages as specified in Part IV (D) Checklist, Item (2), and which includes all of the required elements described in Part III. (Specific information/data required under each component is described in Part III Section I, Evaluation Criteria.)

8. *Appendices,* which should include the following:

(a) (Where Application is submitted by a State or Local government agency or Tribal government jointly with a tax exempt non-profit organization) a properly executed *Joint Application Agreement* as described in Part II. Section B.(2), above;

(b) Filled out, signed and dated *Assurances—Non-Construction Programs* (SF–424B), (Attachment C);

(c) *Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements:* filled out, signed and dated form found at Attachment D;

(d) *Disclosure of Lobbying Activities, SF–LLL:* Filled out, signed and dated form found at Attachment E, if appropriate (omit Items 11–15 on the SF LLL and ignore references to continuation sheet SF–LLL–A)

(e) *Maintenance of Effort Certification* (See Attachment F);

(f) Signed *Agreement(s)* with partnering Financial Institution(s) (or Statements of Policy in the case of Credit Union or CDFI applicants) including identification of insurance carrier and current insurance number (see Part III. Program Sub-Element II(c));

(g) Signed *Agreements with providers of required non-Federal matching contributions* (See Part II, Section H.)

(h) Resumes and/or position descriptions (see Part III Program Element I);

(i) (Where Applicant is ''lead agency'' of a collaborative or consortium of organizations) Copies of *Partnering Agreements between the Applicant and each of the partnering members,* setting forth their roles and responsibilities. (See Part II. Section B(3) and Part III, Elements I and II(b))

(j) Any letters and/or supporting documents from collaborating or partnering agencies in target communities, providing additional information on staffing and experience in support of narrative under Part III Element I. (Such documents are not part of the Narrative and should be included in the Appendices. These documents are therefore not counted against the page limitations of the Narrative.); and

(k) Single points of contact comments, if applicable.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only (See Part IV D. (2), above, concerning margins, type size, etc). They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound applications, or applications enclosed in binders is specifically discouraged.

B. Acknowledgment of Receipt

Acknowledgment of Receipt—All applicants will receive an acknowledgment with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgment. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the Application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5307.

Part VII. Post Award Information and Reporting Requirements.

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

B. Attendance at Training/Technical Assistance/Incentive Awards Conferences

OCS plans to sponsor annual Training/Technical Assistance/ Incentive Awards Conferences in locations at various locations during the course of the five-year project. Every funded project will be required to be represented at these conferences provided that, as expected, funds will be made available by OCS for expenses of attending.

C. Reporting Requirements

Grantees will be required to submit a semi-annual program progress reports (PPR's) and financial reports (SF 269) covering the six months after grant award, and similar reports after conclusion of the first Project Year. Such reports will be due 60 days after the reporting period. Thereafter grantees will only be required to submit annual program progress (PPR's) and financial reports (SF 269), as well as a final program progress and financial report 90 days after the expiration of the grant. In addition, grantees will be submitting information needed for the AFIA program evaluation described in PART I, Section E, and required by section 412 of the AFI Act; and needed for the Secretary's annual Interim Reports and Final Report to the Congress required by Section 414(d) of the AFI Act.

D. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR part 74 (non-profit organizations) or Part 92 (governmental entities) which require audits under OMB Circular A–133.

E. Prohibitions and Requirements With Regard to Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

F. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all applicants/grantees under the Assets for Independence Demonstration Program.

Dated: April 1, 2002.

Clarence H. Carter,

Director, Office of Community Services.

List of Attachments

A. Standard Form 424
B. Standard Form 424A
C. Assurances—Non-Construction Programs
D. Certification Regarding Lobbying Activities
E. Instructions of SF–LLL, Disclosure of Lobbying Activities
F. Certification Regarding Maintenance of Effort
G. Certification Regarding Drug-Free Workplace Requirements
H. Certification Regarding Environmental Tobacco Smoke
I. Certification Regarding Debarment, Suspension and Other Responsibility Matters
J. Office of Management and Budget, E.O. 12372 State Single Point of Contact List (SPOC)
K. DHHS Regulations Applying to All Applicants/Grantees Under the Assets for Independence DEMONSTRATION Program (IDA Program)
L. OMB Poverty Guidelines
M. State Child Support Enforcement Offices

BILLING CODE 4184–01–P

Attachment A page 1

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes **If "Yes," attach an explanation.** ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Attachment A page 2

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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Attachment B page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Attachment C page 1

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Attachment D

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

Attachment E page 1

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

Attachment E page 2

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

BILLING CODE 4184–01–C

Attachment F

CERTIFICATION REGARDING MAINTENANCE OF EFFORT

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under

the _____ Program

by _____ (Applicant Organization), will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

_____
Signature of Authorized Certifying Official

_____
Title

_____
Date

Back Home

BILLING CODE 4184–01–C

Attachment G—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplace under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identity the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal of non-Federal criminal statute involving the manufacture, distribution,

dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs;

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employers must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency had designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Attachment H—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment I—Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal

Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction which a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction.'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification

of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transaction authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Office of Management and Budget Intergovernmental Review E.O. 12372 State Single Point of Contact List (SPOC)

It is estimated that in 2001 the Federal government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below.

States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Contact information for Federal agencies that award grants can be found in *Appendix IV of the Catalog of Federal Domestic Assistance.*

Arkansas

Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
Fax: (501) 682–5206
tlcopeland@dfa.state.ar.us

California

Grants Coordination
State Clearinghouse
Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, California 95812–3044
Telephone: (916) 445–0613
Fax: (916) 323–3018
state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins
Executive Department
Office of the Budget
540 S. Dupont Highway, 3rd Floor
Dover, Delaware 19901
Telephone (302) 739–3323
Fax: (302) 739–5661
chopkins@state.de.us

District of Columbia

Luisa Montero-Diaz
Office of Partnerships and Grants Development
Executive Office of the Mayor
District of Columbia Government
441 4th Street, NW, Suite 530 South
Washington, DC 20001
Telephone: (202) 727–8900
Fax: (202) 727–1652
opgd.eom@dc.gov

Florida

Jasmin Raffington
Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
Fax: (850) 414–0479
clearinghouse@dca.state.fl.us

Georgia

Georgia State Clearinghouse
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: (404) 656–3855
Fax: (404) 656–7901
gach@mail.opb.state.ga.us

Illinois

Virginia Bova
Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3–400
Chicago, Illinois 60601
Telephone: (312) 814–6028
Fax: (312) 814–8485
vbova@commerce.state.il.us

Iowa

Steven R. McCann
Division of Community and Rural Development
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
Fax: (515) 242–4809
steve.mccann@ided.state.ia.us

Kentucky

Ron Cook
Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Telephone: (502) 573–2382
Fax: (502) 573–2512
ron.cook@mail.state.ky.us

Maine

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287–3261
(207) 287–1461 (direct)
Fax: (207) 287–6489
joyce.benson@state.me.us

Maryland

Linda Janey
Manager, Clearinghouse and Plan Review Unit
Maryland Office of Planning
301 West Preston Street—Room 1104
Baltimore, Maryland 21201–2305
Telephone: (410) 767–4490
Fax: (410) 767–4480
linda@mail.op.state.md.us

Michigan

Richard Pfaff
Southeast Michigan Council of Governments
535 Griswold, Suite 300
Detroit, Michigan 48226
Telephone: (313) 961–4266
Fax: (313) 961–4869
pfaff@semcog.org

Mississippi

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
1301 Woolfolk Building, Suite E
501 North West Street
Jackson, Mississippi 39201
Telephone: (601) 359–6762
Fax: (601) 359–6758

Missouri

Angela Boessen
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Truman Building, Room 840
Jefferson City, Missouri 65102
Telephone: (573) 751–4834
Fax: (573) 522–4395
igr@mail.oa.state.mo.us

Nevada

Heather Elliott
Department of Administration
State Clearinghouse
209 E. Musser Street, Room 200
Carson City, Nevada 89701
Telephone: (775) 684–0209
Fax: (775) 684–0260
helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor
Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mike Blake
2½ Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271–2155
Fax: (603) 271–1728
jtaylor@osp.state.nh.us

New Mexico

Ken Hughes
Local Government Division
Room 201 Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827–4370
Fax: (505) 827–4948
khughes@dfa.state.nm.us

North Carolina

Jeanette Furney
Department of Administration
1302 Mail Service Center
Raleigh, North Carolina 27699–1302
Telephone: (919) 807–2323
Fax: (919) 733–9571
jeanette.furney@ncmail.net

North Dakota

Jim Boyd
Division of Community Services
600 East Boulevard Ave, Dept 105
Bismarck, North Dakota 585805–0170
Telephone: (701) 328–2094
Fax: (701) 328–2308
jboyd@state.nd.us

Rhode Island

Kevin Nelson
Department of Administration
Statewide Planning Program
One Capitol Hill
Providence, Rhode Island 02908–5870
Telephone: (401) 222–2093
Fax: (401) 222–2083
knelson@doa.state.ri.us

South Carolina

Omeagia Burgess
Budget and Control Board
Office of State Budget
1122 Ladies Street, 12th Floor
Columbia, South Carolina 29201
Telephone: (803) 734–0494
Fax: (803) 734–0645
aburgess@budget.state.sc.us

Texas

Denise S. Francis
Director, State Grants Team
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 305–9415
Fax: (512) 936–2681
dfrancis@governor.state.tx.us

Utah

Carolyn Wright
Utah State Clearinghouse
Governor's Office of Planning and Budget
State Capitol, Room 114
Salt Lake City, Utah 84114
Telephone: (801) 538–1535
Fax: (801) 538–1547
cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director
Community Development Division
West Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558–4010
Fax: (304) 558–3248
fcutlip@wvdo.org

Wisconsin

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Section Chief, Federal/State Relations
Wisconsin Department of Administration
101 East Wilson Street—6th Floor
P.O. Box 7868
Madison, Wisconsin 53707
Telephone: (608) 266–0267
Fax: (608) 267–6931
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American Samoa

Pat M. Galea'i
Federal Grants/Programs Coordinator
Office of Federal Programs
Office of the Governor/Department of Commerce
American Samoa Government
Pago Pago, American Samoa 96799
Telephone: (684) 633–5155
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pmgaleai@samoatelco.com

Guam

Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone: 011–472–2285
Fax: 011–472–2825
jer@ns.gov.gu

Puerto Rico

Jose Caballero / Mayra Silva
Puerto Rico Planning Board
Federal Proposals Review Office
Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940–1119
Telephone: (787) 723–6190
Fax: (787) 722–6783

North Mariana Islands

Ms. Jacoba T. Seman
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Office of Management and Budget
Office of the Governor
Saipan, MP 96950
Telephone: (670) 664–2289
Fax: (670) 664–2272
omb.jseman@saipan.com

Virgin Islands

Ira Mills
Director, Office of Management and Budget
#41 Norre Gade Emancipation Garden Station, Second Floor
Saint Thomas, Virgin Islands 00802
Telephone: (340) 774–0750
Fax: (340) 776–0069
Irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to *grants@omb.eop.gov*. If you prefer, you may send correspondence to the following address: Attn: Grants Managements, Office of Management and Budget, New Executive Office

Building, Suite 6025, 725 17th Street, NW., Washington, DC 20503.

Please Note: Inquiries about obtaining a Federal grant should not be sent to the OMB e-mail or postal address shown above. The best source for this information is the *CFDA*.

Attachment K—DHHS Regulations Applying to All Applicants/Grantees Under the Assets for Independence Demonstration Program (IDA Program)

Title 45 of the Code of Federal Regulations

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants with subgrants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities
Part 1000—Individual Development Account Reserve Funds Established Pursuant to Grants for Assets for Independence

Poverty 2000

Attachment M—OMB Poverty Guidelines

POVERTY THRESHOLDS IN 2000, BY SIZE OF FAMILY AND NUMBER OF RELATED CHILDREN UNDER 18 YEARS

[Dollars]

Size of family unit	Weighted average thresholds	200 percent of poverty thresholds
One person (unrelated individual)	8,794	17,588
Under 65 years	8,959	17,918
65 years and over	8,259	16,518
Two persons	11,239	22,478
Householder under 65 years	11,590	23,180
Householder 65 years and over	10,419	20,838
Three persons	13,738	27,476
Four persons	17,603	35,206
Five persons	20,819	41,638
Six persons	23,528	47,056
Seven persons	26,754	53,508
Eight persons	29,701	59,402
Nine persons or more	35,060	70,120

Source: U.S. Bureau of the Census, Current Population Survey.

Go to *Poverty 2000* Go to *Poverty Statistics*

Created: *September 20, 2000* Last Revised: *September 25, 2001*

Attachment M—State Child Support Enforcement Offices, Contact Information

Alabama

Department of Human Resources,
50 Ripley Street,
Montgomery, Alabama 36130–1801
800–284–4347(P), 334–242–0606(F)

Alaska

Child Support Enforcement Division,
550 West 7th Avenue, Suite 310,
Anchorage, Alaska 99501–6699
800–478–3300(P), 907–269–6813(F)

American Samoa

Office of the Attorney General,
P.O. Box 7,
Pago Pago, American Samoa 96799
684–633–4163(P), 684–633–1838(F)

Arizona

Department of Economic Security,
Division of Child Support Enforcement,
P.O. Box 40458, Site Code 021A (Street Address: 3443 N. Central Avenue, 4th Floor, Phoenix, AZ 85012),
Phoenix, Arizona 85067
602–252–4045(P), 602–000–0000(F)

Arkansas

Office of Child Support Enforcement,
Division of Revenue,
P.O. Box 8133 (400 East Capitol 72203),
Little Rock, Arkansas 72203
800–264–2445(P), 501–682–6002(F)

California

Dept. of Child Support Services,
P.O. Box 419064, Mail Station 9–700,
Rancho Cordova, California 95741–9064
866–249–0773(P), 916–464–5065(F)

Colorado

Department of Human Services,
Division of Child Support Enforcement
303 East 17th Avenue, Suite 200,
Denver, Colorado 80203–1714
720–947–5000(P), 720–947–5006(F)

Connecticut

Department of Social Services, Bureau of Child Support Enforcement,
25 Sigourney Street
Hartford, Connecticut 06105–5033
860–424–5251(P), 860–951–2996(F)

Delaware

Department of Health and Social Services, Division of Child Support Enforcement,

Herman Hallaway Campus (street addr: 1901 North Dupont Hwy)
P.O. Box 904,
New Castle, Delaware 19720
302–577–4800(P), 302–577–4873(F)

District of Columbia

Office of Corporation Counsel,
441 Fourth Street NW, 5th Floor, Judiciary Square,
Washington, District of Columbia 20024–2480
202–724–5319(P), 202–724–3710(F)

Florida

Department of Revenue, Child Support Enforcement Program,
P.O. Box 8030,
Tallahassee, Florida 32314–8030
850–922–9590(P), 850–414–1698(F)

Georgia

Department of Human Resources Child Support Enforcement,
P.O. Box 38450,
Two Peachtree Street, NW.,
Suite 20–445, Zip 30303,
Atlanta, Georgia 30334–0450
800–227–7993(P), 404–657–3326(F)

Guam

OAG, CSE
130 East Marine Drive,
Hagatna, Guam 96910
671–475–3360(P), 617–477–6118(F)

Hawaii

Department of Attorney General, Child Support Enforcement Agency,
Kakuhihewa State Office Building,
601 Kamokila Boulevard, Suite 251
Kapolei, Hawaii 96707
808–692–7000(P)

Idaho

Department of Health and Welfare, Bureau of Child Support Services,
P.O. Box 83720 (450 West State Street, 6th Floor Zip 83702),
Boise, Idaho 83720–0036
800–356–9868(P), 208–334–0666(F)

Illinois

Illinois Department of Public Aid, Division of Child Support Enforcement,
509 S. 6th St., 6th floor,
Springfield, Illinois 62701
800–477–4278(P), 217–524–4608(F)

Indiana

Child Support Bureau,
402 West Washington Street, Rm W360,
Indianapolis, Indiana 46204
317–233–5437(P), 317–233–4932(F)

Iowa

Department of Human Services, Bureau of Collections,
Hoover Building, 5th Floor,
Des Moines, Iowa 50309–4691
515–281–5580(P), 515–281–8854(F)

Kansas

Department of Social & Rehabilitation Services, Child Support Enforcement Program,
415 SW 8th St., 2nd Floor,
Topeka, Kansas 66601
785–296–3237(P), 785–296–5206(F)

Kentucky

Cabinet for Human Resources, Division of Child Support Enforcement,
275 East Main Street,
Frankfort, Kentucky 40621
502–564–2285(P), 502–564–5988(F)

Louisiana

Support Enforcement Services, Office of Family Support,
P.O. Box 94065 (530 Lakeland Drive),
Baton Rouge, Louisiana 70804–4065
504–342–4780(P), 504–342–7397(F)

Maine

Dept of Human Services, Bureau of Family Independance, Div of Support Enforcement and Recovery,
State House Station,
Augusta, Maine 04333
800–371–3101(P), 201–287–2886(F)

Maryland

Child Support Enforcement Administration,
311 West Saratoga Street,
Baltimore, Maryland 21201
800–332–6347(P), 410–333–8992(F)

Massachusetts

Department of Revenue, Child Support Enforcement Division,
141 Portland Street,
Cambridge, Massachusetts 02139–1937
800–332–2733(P), 617–621–4991(F)

Michigan

Family Independency Agency, Office of Child Support,
P.O. Box 30478 (Street Address: 235 S. Grand Ave., Suite 1215),
Lansing, Michigan 48909–7978
517–373–7570(P), 517–373–4980(F)

Minnesota

Department of Human Services, Office of Child Support Enforcement,
444 Lafayette Road, 4th floor,
St. Paul, Minnesota 55155–3846
651–215–1714(P), 651–297–4450(F)

Mississippi

Department of Human Services, Division of Child Support Enforcement,
P.O. Box 352,
Jackson, Mississippi 39205
800–434–5437(P), 601–359–4415(F)

Missouri

Department of Social Services, Division of Child Support Enforcement,
P.O. Box 2320,
3418 Knipp Dr.,
Jefferson City, Missouri 65101–2320
800–859–7999(P), 573–751–8450(F)

Montana

Dept. of Public HHS,
3075 N. Montana Ave., Suite 112,
Helena, Montana 59620
800–346–5437(P), 406–444–1370(F)

Nebraska

Department of Health and Human Services, Child Support Enforcement Office,
P.O. Box 94728,
West Campus Folsom and West Prospector Place,
Lincoln, Nebraska 68509–4728
800–831–4573(P), 402–471–5543(F)

Nevada

Nevada State Welfare Division,
1470 E. College Parkway,
Carson City, Nevada 89706–7924
775–684–0704(P), 775–684–0702(F)

New Hampshire

Office of Program Support, Office of Child Support,
Health and Human Services Building
129 Pleasant Street,
Concord, New Hampshire 3301
800–852–3345(P), 603–271–4787(F)

New Jersey

Dept. of Human Services Bureau,
P.O. Box 716
Trenton, New Jersey 08625–0716
609–588–2915(P), 609–588–2354(F)

New Mexico

Department: Human Services Department, Child Support Enforcement Bureau,
P.O. Box 25110 (Street Address: 20009 S. Pacheco, Santa Fe, NM 87504),
Santa Fe, New Mexico 73512
505–827–7200(P), 505–827–7285(F)

New York

Div. of Child Support Enf.,
Office of Temporary Assistance and Disability,
40 North Pearl Street, 13th Floor,
Albany, New York 12243–0001
518–474–9081(P), 518–486–3127(F)

North Carolina

Department of Human Resources, Division of Social Services, Child Support Enforcement Section,
100 East Six Forks Road,
Raleigh, North Carolina 27609–7750
919–571–4114(P), 919–571–4126(F)

North Dakota

Department of Human Services, Child Support Enforcement Agency,

P.O. Box 7190 (Street Address: 1929 North Washington Street, Bismark, ND 58507–7190),
Bismarck, North Dakota 58507–7109
701–328–3582(P), 701–328–5497(F)

Ohio

Department of Human Services, Office of Child Support Enforcement,
30 East Broad Street, 31st Floor,
Columbus, Ohio 43266–0423
614–752–6561(P), 614–752–9760(F)

Oklahoma

Department of Human Services, Child Support Enforcement Division,
P.O. Box 53552 (Street Address: 2409 N. Kelley Avenue, Annex Building, (Oklahoma City, OK 73152).
Oklahoma City, OK 73152
405–522–5871(P), 405–522–2753(F)

Oregon

Department of Justice,
Oregon Child Support Program,
500 Summer St., 2nd Floor,
Salem, Oregon 97301–1066
503–378–5567(P), 503–391–5526(F)

Pennsylvania

Department of Public Welfare, Bureau of Child Support Enforcement, P.O. Box 8018, Street Address: 1303 North Seventh St., 17102 Commerce Bldg., 12th Floor, Harrisburg, Pennsylvania 17015
717–787–3672(P), 717–787–9706(F)

Puerto Rico

Department of the Family, P.O. Box 9023349, San Juan, Puerto Rico 00902–3349,
787–767–1500(P), 787–723–6187(F)

Rhode Island

Department of Administration, Division of Child Support Enforcement, 77 Dorrance Street, Providence, Rhode Island 02903
401–222–5132(P), 401–277–6674(F)

South Carolina

Department of Social Services, Child Support Enforcement Division, P.O. Box 1469, Street Address: 3150 Harden Street, Columbia, South Carolina 29202–1469
803–898–7601(P), 803–898–9201(F)

South Dakota

Department of Social Services, Office of Child Support Enforcement, 700 Governor's Drive, Suite 84, Pierre, South Dakota 57501–2291
605–773–3641(P), 605–773–5246(F)

Tennessee

Department of Human Services, Child Support Services, Citizens Plaza Building, 12th Floor, 400 Deadrick Street, Nashville, Tennessee 37248–7400
615–313–4880(P), 615–532–2791(F)

Texas

Office of the Attorney General, Child Support Division, P.O. Box 12017, Street Address: 5500 E. Oltorf, Austin, Texas 78711–2017
512–460–6000(P), 512–834–9712(F)

Utah

Department of Human Services, Bureau of Child Support Services, P.O. Box 45011, 515 East, 100 South, Salt Lake, Utah 84145–0011
801–536–8500(P), 801–536–8509(F)

Vermont

Office of Child Support, 103 South Main Street, Waterbury, Vermont 05671–1901
802–244–1483(P), 802–244–1483(F)

Virgin Islands

Department of Justice, Paternity and Child Support Division, Nisky Center, Suite 500, 2nd Floor, St. Thomas, Virgin Islands 00802
340–777–3070(P)

Virginia

Department of Social Services, Division of Child Support Enforcement, 730 East Broad Street, 4th floor, Richmond, Virginia 23219–1849
804–692–1428(P), 804–692–1405(F)

Washington

DSHS, Division of Child Support, P.O. Box 9162, Street Address: 712 Pear St, SE., Olympia, Washington 98507
360–664–5005(P)

West Virginia

Department of Health & Human Resources, Bureau of Child Support Enforcement, 350 Capitol Street, Room 147, Charleston, West Virginia 25301–3703
304–558–3780(P)

Wisconsin

Bureau of Child Support, Division of Economic Support, P.O. Box 7935, Street Address: 1 West Wilson Street, Room 382, Madison, Wisconsin 53707–7935
608–266–9909(P), 608–267–2842(F)

Wyoming

Department of Family Services, Child Support Enforcement Program, Hathaway Building, Rm 361, 2300 Capital Avenue, Cheyenne, Wyoming 82002–0710
307–777–7631(P), 307–777–3693(F)

[FR Doc. 02–8717 Filed 4–12–02; 8:45 am]
BILLING CODE 4184–01–P

Federal Register

Monday,
April 15, 2002

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Quino Checkerspot Butterfly (Euphydryas editha quino); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH03

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Quino Checkerspot Butterfly (*Euphydryas editha quino*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 69,440 hectares (ha) (171,605 acres (ac)) in Riverside and San Diego Counties, California, are designated as critical habitat for the Quino checkerspot butterfly.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the Quino checkerspot butterfly are those habitat components that are essential for the Quino checkerspot butterfly. All areas designated as critical habitat for the Quino checkerspot butterfly contain one or more of the primary constituent elements essential to the conservation of the species. This final rule takes into consideration the potential economic and other effects of designating critical habitat for the Quino checkerspot butterfly.

We solicited data and comments from the public on all aspects of the proposed rule and draft economic analysis. We revised the proposal and the draft economic analysis to incorporate or address new information received from habitat and butterfly surveys conducted during the 2001 butterfly flight season; public comments on the proposed critical habitat designation and the draft economic analysis on the proposed designation; the Quino Checkerspot Butterfly Recovery Plan (Service, in prep.); and any new scientific and commercial information made available since the proposal was published.

DATES: This designation becomes effective on May 15, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Chief, Branch of Listing, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The Quino checkerspot butterfly (*Euphydryas editha quino*) is a member of the family Nymphalidae (brush-footed butterflies) and the subfamily Melitaeinae (checkerspots and fritillaries). The Quino checkerspot differs in physical appearance from other subspecies of *E. editha* in size, wing coloration, larval, and pupal characteristics (Mattoni *et al.* 1997). Researchers have spent more than 4 decades conducting extensive focused research on Edith's checkerspot (*Euphydryas editha*), in particular the federally-listed bay checkerspot butterfly (*Euphydryas editha bayensis*). While an extraordinary amount of information is available on Edith's checkerspot in general, specific information on the Quino checkerspot is sparse (Murphy and White 1984, Mattoni *et al.* 1997, Osborne and Redak 2000), including only two formal ecological studies (White and Levin 1981, Osborne and Redak 2000). Therefore, much of the information used in developing this critical habitat designation, as well as the recovery and management strategy for the Quino checkerspot butterfly, as discussed in the recovery plan that is currently being finalized (Service, in prep.), is based on research on other subspecies of Edith's checkerspot, especially the bay checkerspot butterfly. Because there are a number of biological and ecological similarities between the two federally endangered subspecies of Edith's checkerspot, including shared host plant species, a primarily coastal (historic) distribution, and apparently similar within-patch dispersal behavior (Mattoni *et al.* 1997, White and Levin 1981), we believe that extrapolation of bay checkerspot butterfly research conclusions to the Quino checkerspot butterfly is justified in most cases.

The Quino checkerspot butterfly has undergone several nomenclatural changes. Originally described as *Melitaea quino* (Behr 1863), Gunder (1929) reduced it to a subspecies of *Euphydryas chalcedona.* At the same time, he described *Euphydryas editha wrighti* from a checkerspot specimen collected in San Diego County. After reexamining Behr's descriptions and specimens, Emmel *et al.* (1998) concluded that the Quino checkerspot butterfly should be associated with *E. editha,* not *E. chalcedona.* For the Quino checkerspot butterfly, *E. editha quino* is now the accepted scientific name.

The life cycle of the Quino checkerspot butterfly includes four distinct life stages: egg, larva (caterpillar), pupa (chrysalis), and adult, with the larval stage divided into 5 to 7 instars (periods between molts, or shedding skin). There is typically one generation of adults per year, with a 4- to 6-week flight period beginning between late February and May, depending on weather conditions (Emmel and Emmel 1973). Adult emergence from pupae is staggered, resulting in a 1- to 2-month flight season, with each adult butterfly living approximately 10 to 14 days (Service, in prep.).

The adult Quino checkerspot butterfly has a wingspan of approximately 4 centimeters (cm) (1.5 inches (in.)). The top sides of the wings have a red, black, and cream colored checkered pattern while the bottom sides have a red and cream marbled pattern. The abdomen of the Quino checkerspot butterfly has red stripes across the top. Quino checkerspot butterfly larvae are dark black with a row of orange fleshy, hairy extensions on their backs. Pupae are mottled black on a pale blue-gray background.

Peak adult butterfly emergence for most brush-footed butterfly species, and probably for Quino checkerspot butterflies as well, occurs shortly after the beginning of the flight season, usually in the second or third week (Zonneveld 1991). Female bay checkerspot butterflies usually mate on the day they emerge from the pupa and lay 1 or 2 egg clusters per day for most of their adult life. Bay and Quino checkerspot egg clusters typically contain 20 to 150 eggs (M. Singer, C. Parmesan, and G. Pratt, pers. comm., 1999). Eggs deposited by adults on host plants hatch in 10 to 14 days. If sufficient rain falls in late summer or early fall, a rare second generation of fewer adults may occur (Mattoni *et al.* 1997).

Quino checkerspot butterfly larvae may undergo as many as seven molts prior to pupation. During the first two instars, pre-diapause (before summer dormancy) larvae cannot move more than a few centimeters and are usually restricted to the primary host plant species (plants on which the adult

female butterfly lays her eggs). Newly hatched larvae spin a web and feed in clusters on the plant where their eggs were deposited. During the third instar (about 10 days after hatching), larvae are able to move between individual host plants. Third instar larvae usually wander independently in search of food and may switch from feeding on the plant on which they hatched to another host plant, either of the same species or another one that serves as an alternate food source. If larvae have accumulated sufficient energy reserves, they enter diapause (summer dormancy) as host plants age and become dry and inedible, and usually remain in diapause until December or January. Although the exact location of diapausing Quino checkerspot butterfly larvae is not known, clusters of post-diapause larvae found near dense grass and shrub cover indicate that they may diapause in these areas (Osborne and Redak 2000). Laboratory observations have demonstrated Quino checkerspot butterfly larvae are capable of sustaining or reentering diapause for multiple years, the maximum duration of which has not yet been determined (G. Pratt, pers. comm., 2001).

Sufficient rainfall, usually during November or December, stimulates germination and growth of host plants, and apparently causes larvae to break diapause. Records of Quino checkerspot butterfly individuals collected following unusual summer rains indicate that it does not require winter chilling to break diapause, and may not diapause at all under some circumstances (Mattoni *et al.* 1997). Post-diapause larvae can crawl up to several meters in search of food and disperse among their host plants. Post-diapause larval dispersal has been well documented in the bay checkerspot butterfly. Post-diapause larvae seek microclimates (small habitats with uniform climate) with exposure to sunlight, which speeds development (White 1974, Weiss *et al.* 1987, Osborne and Redak 2000). Because of variable weather during winter and early spring, the time between the termination of diapause and pupation can range from 2 weeks, if conditions are warm and sunny, to over 2 months if cold, rainy conditions prevail (G. Pratt, pers. comm., 2001). Post-diapause larvae undergo from 2 to as many as 4 instars prior to pupating in webbed shelters near ground level. Adults emerge from pupae after approximately 10 days, depending on the weather (Mattoni *et al.* 1997).

Adult Quino checkerspot butterflies spend time searching for mates, basking in the sun to regulate body temperature, feeding on nectar, defending territories, and in the case of females, searching for sites to deposit eggs. The Quino checkerspot butterfly, like other subspecies of Edith's checkerspot, shows a habitat preference for low-growing vegetation interspersed with barren spots (Osborne and Redak 2000). The thermodynamic requirements of the butterfly and its natural avoidance of shaded areas deter flight below the canopy of vegetation (M. Singer, pers. comm., 2001).

Male Quino checkerspot butterflies, and to a lesser extent females, are frequently observed on hilltops and ridgelines (Carlsbad Fish and Wildlife Office GIS Quino checkerspot butterfly database and metafile, Osborne 2001). A number of behaviors characteristic of species commonly found on hilltops have been documented. For example, male Quino checkerspots have been observed to perch consistently in prominent locations on hilltops devoid of host plants and ''attack'' any other males that approach (Osborne 2001, Pratt 2001). Further evidence that Edith's checkerspots may display facultative ''hilltopping'' behavior was found in Colorado, where males of an Edith's checkerspot population were also observed aggregating on hilltops, where females travel to seek mates, when population densities were low (Ehrlich and Wheye 1986 as discussed in Ehrlich and Murphy 1987). Hilltops may also represent centers of Quino checkerspot population density in some areas. Based on occurrence data, Quino checkerspot butterfly adults are frequently observed on hilltops (Service, in prep.), even in the absence of nearby larval host plants (Osborne 2001). Based on current knowledge of the Quino checkerspot butterfly ecology and biology, we believe hilltops provide essential breeding areas for some local populations.

Habitat patch distributions are defined by a matrix of adult resources (all larval resources are found within areas of adult movement), primarily nectar plants, oviposition plants, and basking sites. Habitat patches for the bay checkerspot butterfly can vary greatly in area and distribution (Harrison *et al.* 1988). Habitat patch fragmentation occurs when land use changes compromise adult movement patterns and frequently results from habitat destruction that reduces resource availability. Such fragmentation may significantly reduce the ability of habitat patches to support local populations.

Most Quino checkerspot butterfly populations are part of a larger metapopulation structure (sets of local habitat patch populations) (Service, in prep.). Isolated habitat patches are not sufficient to ensure the long-term persistence of butterfly metapopulations (Hanski 1999). A local habitat patch population may be expected to persist on the time scale of years (Harrison 1989). Persistence of metapopulations for longer terms results from the interaction among sets of local habitat patch populations at larger geographic scales. Although local habitat patch populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extirpation and mutual recolonization, processes that occur on the order of every 10 to 40 years for some butterflies, including the Quino checkerspot (Harrison *et al.* 1988, Murphy and White 1984).

Metapopulations should be stable over the course of decades, since most of their constituent habitat patch populations will be recolonized within approximately 10 years of extirpation. The intervening distance and topography among habitat patches primarily determine colonization rates (Harrison 1989). The long-term persistence of butterfly species with metapopulation dynamics depends on the maintenance of temporarily unoccupied habitat patches and recolonization events that link habitat patches within metapopulations (Murphy and White 1984; Hanski 1999; Service, in prep.). Maintenance of landscape connectivity (habitat patches linked by intervening dispersal areas) is essential in order to maintain metapopulation resilience. Land use changes that dispersal between habitat patches and isolate local populations by compromising landscape connectivity can be just as detrimental to metapopulation survival as those that destroy or reduce the size of habitat patches (Service, in prep.).

Possibly the most extensive documentation of metapopulation dynamics in any species has been carried out over the past 42 years on several subspecies of Edith's checkerspot, primarily the endangered bay checkerspot (*e.g.*, Ehrlich 1961, 1965; Singer 1972; Murphy and Ehrlich 1980; White and Levin 1981; Ehrlich and Murphy 1987; Harrison 1989; Boughton 1999, 2000). Although not every population of Edith's checkerspot studied has demonstrated metapopulation dynamics (Ehrlich and Murphy 1987), the majority of studies (*e.g.*, Ehrlich 1961, 1965; Singer 1972; Murphy and Ehrlich 1980; White and Levin 1981; Ehrlich and Murphy 1987; Harrison 1989; Boughton 1999, 2000) and local climate and habitat patterns

(Service, in prep.) indicate most Quino checkerspot populations should display some type of metapopulation dynamics. Until the specific long-term dynamics or genetic composition of Quino checkerspot populations are documented and suggest otherwise, it is prudent to assume that local populations belong to a greater metapopulation at some spatial and temporal scale (Hanski 1999; Service, in prep.).

Mark-release-recapture studies indicate that in most seasons Edith's checkerspot subspecies exhibit sedentary behavior during the majority of their adult lives, although these studies were not specifically designed to quantify long-distance dispersal. In this type of study, researchers mark captured individuals, release them, and then recapture as many as possible within a target area after a period of time. Most recaptures have occurred within 100 to 200 meters (m) (490 to 980 feet (ft)) of release (Ehrlich 1961, 1965; Gilbert and Singer 1973; White and Levin 1981; Harrison *et al.* 1988; Harrison 1989; Boughton 1999, 2000). Harrison *et al.* (1988) documented no between-habitat patch transfers of marked individuals greater than 1 km (0.6 mi). Harrison (1989) recaptured bay checkerspots in a target habitat patch greater than 1 km (0.6 mi) from the point of release in only 5 percent of cases. However, dispersal tendency appears to be relatively variable in Edith's checkerspots (White and Levin 1981) and appears to have evolved to fit local or regional situations (Gilbert and Singer 1973). White and Levin (1981) noted that, ''It seems likely from the lower return rate in 1972 (a dry year) and from the observed pattern of out-dispersal, that many marked (male Quino checkerspot butterflies) individuals dispersed beyond the area covered by our efforts that year.'' Research indicated that females were more likely to emigrate than males (Ehrlich *et al.* 1984); and older adults appeared to have a greater tendency to disperse as butterfly densities, host plant suitability, and female egg load weights declined (White and Levin 1981, Harrison 1989).

When quality host plants are in short supply, larvae respond by diapausing (if they are mature enough) and adults respond by dispersing (White and Levin 1981, Murphy and White 1984). Several populations of Quino checkerspots studied for almost a decade increased in number by nearly two orders of magnitude in 1977, and many habitat patches were defoliated by larvae, resulting in very high rates of dispersal (Murphy and White 1984). Dispersal tendency also increased when dry conditions reduced the number and suitability of host plants (White and Levin 1981). Long-distance dispersal in bay checkerspot butterflies has been documented as far as 6.4 km (3.9 mi) (Murphy and Ehrlich 1980), 5.6 km (3.4 mi) (1 male), and 2 km (1.8 mi) (1 female) (Harrison 1989). Individual long-distance dispersal may be prevalent under certain conditions, but the likelihood of long-distance colonization by a given individual is usually low because environmental conditions promoting dispersal are not likely to also promote colonization due to reduced butterfly densities and host plant quality.

Dispersal direction from habitat patches seems to be random in the bay checkerspot butterfly, but dispersing butterflies are likely to move into habitat patches when they can detect them (pass within approximately 50 m (163 ft)), and are most likely to remain where the existing density of butterflies is lowest (Harrison 1989). Bay checkerspot butterfly patch occupancy patterns also suggest that patches separated from a source population by hilly terrain are less likely to be colonized than those separated by flat ground (Harrison 1989). Harrison (1989) concludes that because establishment rates were low during her study, and initial dispersal direction was random, relatively large numbers of butterflies must have emigrated from the source population at some point to explain the apparent long term habitat patch re-colonization pattern. High habitat patch colonization rates probably only occur during rare outbreak years, when high local densities combine with favorable establishment conditions in unoccupied patches (Harrison 1989). Rare outbreak events are thought to play a crucial role in Quino checkerspot butterfly metapopulation resilience (Murphy and White 1984).

Long-distance habitat patch colonization may be achieved within a single season through dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization events. Bay checkerspot island habitat patch recolonization distances from the Morgan Hill mainland habitat patch population averaged 3.4 km (2.1 mi) between the late 1970s and late 1980s, with a minimum distance (individual butterfly movement) of 1.4 km (0.9 mi), and a maximum of 4.4 km (2.7 mi) (Harrison *et al.* 1988). An overview of dispersal studies suggests that long-distance movements by individuals are not common, but may allow for infrequent between-patch exchanges of up to 6.0 km (3.7 mi) under optimal conditions. Bay checkerspot butterfly habitat patch colonization patterns and models suggest that habitat patches as distant as 7.0 km (4.3 mi) may provide sources of recolonization for each other via stepping-stone dispersal over a 40- to 50-year period (Harrison 1988 *et al.*, Harrison 1989).

Quino checkerspot butterfly oviposition (egg deposition) has most often been documented on *Plantago erecta* (dwarf plantain). However, egg clusters and pre-diapause larvae have also recently been documented on other species of host plant. *Plantago patagonica* (woolly plantain) and *Anterrhinum coulterianum* (white snapdragon) appear to be the primary host plants utilized above the elevational limits of dwarf plantain (approximately 3000 m (9750 ft)) (Pratt 2001). In 2000 (a dry year), all larval clusters at the Silverado pre-approved mitigation area in Riverside County were found on woolly plantain (and few white snapdragon plants were observed). In 2001, however, when both host plants were abundant, all larval clusters were found on white snapdragon despite the presence of woolly plantain (Pratt 2001). In 2001, a site near Barrett Junction in southern San Diego County yielded another interesting primary host plant observation. Although dwarf plantain was abundant, the plants were small in stature and all larval clusters were found on *Cordylanthus rigidus* (thread-leaved bird's beak) within the patches of dwarf plantain, confirming earlier observations of this species as a primary host plant (Pratt 2001). All host plant species occur in coastal sage scrub, open chaparral, grassland, and similar open-canopy plant communities. Dwarf plantain is often associated with soils with fine-textured clay or with cryptogamic crusts (i.e., soil crusts composed of fungi, mosses, and lichens).

The two most important factors affecting the suitability of host plants for Quino checkerspot butterfly oviposition are exposure to solar radiation and host plant phenology (timing of development). Quino checkerspot butterflies deposit eggs on plants located in full sun, preferably surrounded by bare ground or sparse, low-growing vegetation (Weiss *et al.* 1987, 1988; Osborne and Redak 2000). Primary host plants must remain edible for approximately 8 weeks to support pre-diapause larvae if no secondary host plants (species of host plant adults do not deposit eggs on) are available (Singer 1972, Singer and Ehrlich 1979).

Secondary host plants may be important before and after larval

diapause. Secondary host plants are important for pre-diapause larvae when the primary hosts become unavailable before larvae can enter diapause, and for post-diapause larvae when primary host plant availability is limited when the larvae emerge from diapause. Such was the case with many populations of the bay checkerspot where dwarf plantain was the primary host plant, but most larvae survived to reach diapause by migrating to *Castilleja exserta* (owl's clover). Pre-diapause larvae fed on owl's clover until diapause, then returned to feeding on dwarf plantain when they broke diapause in the winter (Singer 1972, Ehrlich *et al.* 1975). Some populations of the Quino checkerspot butterflies may depend on secondary hosts for their survival. Multiple overlapping primary and secondary host plant distributions within a habitat patch probably contribute to patch suitability. For example, in 2001 a host plant micro-patch was documented in southwestern San Diego County where thread-leaved bird's beak was the primary host plant, but dwarf plantain (relatively small in stature) and owl's clover were also present (Pratt 2001). It is possible that dwarf plantain is an important post-diapause secondary host plant at sites such as the one near Barrett Junction because thread-leaved bird's beak is very immature, and less abundant, than dwarf plantain when larvae come out of diapause (Pratt 2001).

Edith's checkerspot butterflies use a much wider range of plant species for adult nectar feeding than for larval foliage feeding. The butterflies frequently take nectar from *Lomatium* spp. (lomatium), *Muilla* spp. (goldenstar), *Achillea millefolium* (milfoil or yarrow), *Amsinkia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Plagyobothrys* and *Cryptantha* spp. (popcorn flowers), *Gilia* spp. (gilia), *Eriogonum fasciculatum* (California buckwheat), *Allium* spp. (onion), and *Eriodictyon* spp. (yerba santa) (D. Murphy and G. Pratt, pers. comm., 2000). *Salvia columbare* (chia) may also be used for nectar feeding (Orsak 1978; K. Osborne, pers. comm., 2001), but is probably not preferred (G. Pratt, D. Murphy, pers. comm., 2001). Quino checkerspot butterflies have been observed flying several hundred meters from the nearest larval habitat patch to nectar sources.

Although habitat patches may theoretically be delineated by long-term studies based on host and nectar plant distribution and density, delineation of long-term habitat patch footprints, or extant larval occupancy, may be difficult to estimate at any given point in time (Service, in prep.). Plant population quality, density, and distribution change over time for a variety of reasons, and Quino checkerspot populations have evolved to respond to shifting habitat patch suitability in space and time (Service, in prep.). For example, environmental conditions may not favor plant germination one season, or favor germination of other plant species, but low-density germination of host plant individuals or a seed bank may still result in abundant germination at a later date. Lower primary host plant density may be sufficient if secondary host plant species are present, and feeding by herbivores, including Quino checkerspot butterfly larvae, will reduce the density of host plants, even under the best environmental conditions (Service, in prep.). During years when host plant densities are too low to support larvae to maturity, the larvae may remain in diapause for 2 or more years. Host plant densities may even remain very low for a long enough period to result in the extirpation of larval residents (of micropatches) or local populations (of habitat patches). If the canopy opens or environmental conditions improve, these sites may support larvae again. Because the size, quality, and number of host plant micropatches and habitat patches fluctuate regularly, so do Quino checkerspot population distributions and the number of Quino checkerspot individuals that mature each season.

The Quino checkerspot butterfly is threatened primarily by urban and agricultural development, non-native plant species invasion, off-road vehicle use, grazing, and fire management practices (62 FR 2313). These threats destroy and degrade the quality of habitat and result in the extirpation of local Quino checkerspot populations. Quino checkerspot butterfly population decline likely has been, and will continue to be, caused in part by enhanced nitrogen deposition, elevated atmospheric carbon dioxide concentrations, and climate change (Service, in prep.). Nonetheless, urban development poses the greatest threat and exacerbates all other threats. Activities resulting in habitat fragmentation or host or nectar plant removal reduce habitat quality and increase the probability of local Quino checkerspot butterfly population extirpation and species extinction.

Other threats to the species identified in the final listing rule (62 FR 2313) include illegal trash dumping and predation. Dumping, a documented problem for some populations (G. Pratt, pers. comm., 2000, 2001), is detrimental because of resulting habitat degradation and destruction. Over-collection by butterfly hobbyists and dealers is a probable threat, although the magnitude of this activity is unknown. Stamp (1984) and White (1986) examined the effects of parasitism and predation on the genus *Euphydryas*, although it is not clear whether these mortality factors pose a significant threat to this species. Predation by Argentine ants (*Iridomyrmex humilis*) has been observed in colonies of the butterfly in the laboratory (G. Pratt, pers. comm., 2000) and intense predation by non-native Brazilian fire ants (*Solenopsis invicta*) is likely where they co-occur with Quino checkerspot butterflies (Porter and Savignano 1990). Brazilian fire ants were documented in 1998 in the vicinity of historic Quino checkerspot butterfly habitat in Orange County and have subsequently been found in Riverside and Los Angeles Counties (California Department of Food and Agriculture 1999).

The recovery strategy for the Quino checkerspot butterfly focuses on conservation of occurrence complexes within recovery units, as discussed in the recovery plan that is currently being finalized (Service, in prep.). Occurrence complexes are based on Quino checkerspot butterfly observations, probably within a greater distribution of undocumented metapopulations. Occurrences are mapped in the recovery plan (Service, in prep.) using a 1 km (0.6 mi) dispersal radius. This distance delineates the area within which we would expect to find the habitat patch associated with an individual observed butterfly (Gilbert and Singer 1973, Harrison *et al.* 1988, Harrison 1989). Occurrences within 2 km (1.2 mi) of each other are considered to be part of the same occurrence complex because such observations are proximal enough that the observed butterflies would have come from the same population (Ehrlich and Murphy 1987, Harrison *et al.* 1988, Harrison 1989).

Recovery units represent the primary areas for managing recovery efforts (Service, in prep.). Most recovery units contain of one or more core occurrence complexes and correspond to habitat regions described in the recovery plan (Service, in prep.). Several factors were considered in identifying recovery units, including biological factors, political boundaries, and ongoing conservation efforts. In some instances, recovery unit boundaries were modified to maximize efficiency of reserves, encompass areas of common threats, or accommodate logistic concerns. Recovery units include areas of apparent landscape connectivity that are

not currently known to be occupied (*e.g.*, the Railroad Canyon Reservoir (Canyon Lake) area in Riverside County), when evidence warranted inclusion. Because of their broad scale, recovery units include lands both essential and non-essential to the long term conservation of the Quino checkerspot butterfly.

Although the Quino checkerspot butterfly is a subspecies of Edith's checkerspot, for ease in description we refer to it as a species for the remainder of this document.

Previous Federal Action

On September 30, 1988, we received a petition dated September 26, 1988 to list the Quino checkerspot butterfly as endangered under the Act from Dr. Dennis Murphy of the Stanford University Center for Conservation Biology. At the time the petition was submitted, Quino checkerspot butterfly observations had not been reported for several years. The status of the Quino checkerspot butterfly had been under review since 1984 (49 FR 21664). It was classified as a Category 1 candidate species on November 21, 1991 (56 FR 58804), meaning that information on file was sufficient to support a proposal to list this species as endangered or threatened.

On August 4, 1994, we published a petition finding in the **Federal Register** (59 FR 39868) with a proposed rule to list the Quino checkerspot butterfly as endangered. This publication included the 90-day finding that the petition presented substantial information that listing the Quino checkerspot butterfly may be warranted, the 12-month petition finding that listing the Quino checkerspot butterfly was warranted, and the proposed rule to list the species. On September 26, 1994, we published a notice extending the public comment period and announcing a public hearing on the proposed rule for the Quino checkerspot butterfly and several other species (59 FR 49045). We published a final rule listing the Quino checkerspot butterfly as endangered on January 16, 1997 (62 FR 2313). In the final listing rule, we determined that designation of critical habitat was not prudent for the Quino checkerspot butterfly.

On June 30, 1999, the Center for Biological Diversity filed suit in the U.S. District Court, challenging the not-prudent finding for critical habitat as published in the final listing rule for the Quino checkerspot butterfly. The plaintiff contended that we did not properly consider the benefits of designating critical habitat or adequately document known or perceived threats that would result from a critical habitat designation. On February 16, 2000, we agreed to a stipulated settlement that required us to re-evaluate the existing not-prudent finding. If we found that critical habitat was prudent, then a proposal to designate critical habitat was to be submitted for publication in the **Federal Register** by February 1, 2001, and a final designation made by October 1, 2001. If we found that critical habitat was not prudent, then a final determination was to be submitted for publication in the **Federal Register** by June 1, 2001.

In accordance with the stipulated settlement agreement, we re-evaluated the not-prudent finding as determined at the time of listing. Following our re-evaluation, we determined that designating critical habitat was, in fact, prudent and published a proposed rule to designate it on February 7, 2001 (66 FR 9476).

Because completion of the draft economic analysis for the proposed designation was delayed and we required time to hold public hearings, we requested a 90-day extension to adequately address public comments and complete the final designation from the plaintiffs. The plaintiffs agreed to the extension and on October 2, 2001 the District Court approved the 90-day extension requiring us to complete the final designation by January 4, 2002. We subsequently received another extension giving us until April 4, 2002 to complete the final designation of critical habitat for the Quino checkerspot butterfly.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02 we define destruction or adverse modification as ''the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide for other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, habitat areas that provide for the essential life cycle needs of the species (*i.e.,* areas containing the primary constituent elements, as defined at 50 CFR 424.12(b)) using the best scientific and commercial data available.

Section 4 requires that we designate critical habitat for a species, to the maximum extent determinable and practicable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be essential, at the time of designation, using the best information available.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that, ''The Secretary shall designate as critical

habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside the range of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires us, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to rely on primary and original sources of information as the basis for critical habitat designations. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion.

Habitat is often dynamic and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Therefore, federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

We used the best scientific and commercial data available to determine areas essential to the conservation of the Quino checkerspot butterfly. We reviewed available information that pertains to the habitat requirements of this species, including data from research and survey observations published in peer-reviewed articles; information from private and institutional collections; regional GIS coverages; data collected from biological reports submitted by holders of section 10(a)(1)(A) recovery permits, including data from the 2001 flight season; and recommendations from the Quino checkerspot butterfly recovery team during the development of the draft and final recovery plans for the butterfly.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, space for individual and population growth and normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected from disturbance or representative of the historic geographical and ecological distribution of a species. All areas designated as critical habitat for the Quino checkerspot butterfly contain one or more of these physical or biological features.

The areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of Quino checkerspot butterflies throughout its range and provide those habitat components essential for the conservation of the species. Habitat components that are essential for the Quino checkerspot butterfly (*i.e.,* primary constituent elements) include the biological needs of larval diapause, feeding, and pupation, adult oviposition, nectaring, roosting and basking, and dispersal, genetic exchange, and shelter. The critical habitat units are configured to provide room for metapopulation dynamics, which is essential for the conservation of the species, including dispersal corridors.

Primary constituent elements occur in undeveloped areas that support various types of open-canopy woody and herbaceous plant communities. They include, but are not limited to, plant communities that provide populations of host plant and nectar sources for the Quino checkerspot butterfly.

The primary host plants (species of plants that butterflies deposit eggs on) that have been documented for the Quino checkerspot butterfly include dwarf plantain, woolly plantain, white snapdragon, and thread-leaved bird's beak, with dwarf plantain being both the most common and the most commonly used as a host. Dwarf plantain is an annual herb found in coastal sage scrub, open chaparral, grassland and similar plant communities. The plant is often associated with cryptogamic crusts and fine-textured clay soils.

Some local populations of Quino checkerspot butterfly larvae may depend on secondary host plants to survive. Typically, secondary hosts are important when the primary host plants begin to dry up and become inedible before larvae are mature enough to respond by entering diapause (Singer 1972, Ehrlich *et al.* 1975). Owl's clover is important as a pre-diapause secondary host plant. Secondary host plant species may also be important for post-diapause larvae if primary host plant species are not abundant enough when the larvae come out of diapause. Species that serve as primary host plants at one site may serve as secondary host plants at another. Use may also vary annually, depending on local population preferences and environmental conditions.

Adult Quino checkerspot butterflies use a variety of plants for nectar feeding. Quino checkerspot butterflies prefer flowers with a platform-like surface on which they can remain upright while feeding (D. Murphy and G. Pratt, pers. comm., 2000). The Quino checkerspot butterfly frequently takes nectar from lomatium, goldenstar, yarrow, fiddleneck, goldfields, popcorn flower, gilia, California buckwheat, onion, and yerba santa (D. Murphy and G. Pratt, pers. comm., 2000).

Topographic features (*i.e.,* hills and ridges) that are relatively prominent for the geographic area associated with an occupied habitat patch are also frequently inhabited by Quino checkerspot butterflies during mating season. Male Quino checkerspot

butterflies have been observed to patrol territories, perch in open areas on hilltops, and chase away competing males when they approach (Osborne 2001, Pratt 2001). Further evidence that Edith's checkerspots may display facultative ''hilltopping'' behavior was found in Colorado. Males of another subspecies of Edith's checkerspot also appeared to aggregate on hilltops, where females travel to seek mates, when population densities were low (Ehrlich and Wheye 1986 as discussed in Ehrlich and Murphy 1987). Such ''hilltopping'' behavior is believed to be important to reproduction in some local populations (Service, in prep.). These topographic features also constitute primary constituent elements of Quino checkerspot butterfly habitat.

In summary, the primary constituent elements of Quino checkerspot butterfly habitat consist of:

(1) Grassland and open-canopy woody plant communities, such as coastal sage scrub, open red shank chaparral, and open juniper woodland, with host plants or nectar plants;

(2) Undeveloped areas containing grassland or open-canopy woody plant communities, within and between habitat patches, utilized for Quino checkerspot butterfly mating, basking, and movement; or

(3) Prominent topographic features, such as hills and/or ridges, with an open woody or herbaceous canopy at the top. Prominence should be determined relative to other local topographic features.

Criteria Used To Identify Critical Habitat Units

The draft recovery plan (Service 2001) for the Quino checkerspot butterfly identifies the specific recovery needs of the species, and serves as guidance for identifying areas essential to conservation of the Quino checkerspot butterfly to propose as critical habitat. This recovery plan is being finalized based on data from the 2001 adult butterfly flight season and public comments received on the draft recovery plan. The final recovery plan (Service, in prep.) details a strategy for recovering the butterfly to the point at which it can be downlisted to threatened. This recovery strategy focuses on lands described as essential for the long term conservation of the Quino checkerspot butterfly because they: (1) Contain extant populations that must be managed to recover the species; (2) provide landscape connectivity or linkages among populations, or at least are required to maintain natural long term resilience and genetic exchange among smaller populations or metapopulations; or (3) contain habitats that were part of a historical population distribution adjacent to occupied areas and either contain habitat necessary to support the expansion of small, low-density populations or have the potential to contain suitable habitat for them if they are restored.

Areas supporting core populations (large occurrence complexes) of the Quino checkerspot butterfly, or that have the potential to support core populations (*i.e.,* areas currently containing or supporting primary constituent elements), are essential to the long term conservation of the species because they represent the foundation for continued persistence of the species. Furthermore, some habitat areas that would not be considered essential if they were geographically isolated are, in fact, essential when situated in locations where they facilitate continued landscape connectivity among surrounding local populations or otherwise play a significant role in maintaining metapopulation viability (*e.g.,* by providing sources of immigrants to recolonize adjacent habitat patches following periodic extirpation events). Populations on the periphery of the species' range, or in atypical environments, are important for maintaining the genetic diversity of the species and could be essential to evolutionary adaptation to rapidly changing climatic and environmental conditions (Lesica and Allendorf 1995).

In the proposed designation of critical habitat for the Quino checkerspot butterfly we used a 4.8 km (3 mi) radius from each recent occurrence to define areas essential to the conservation of the butterfly. Following the proposal, we re-evaluated the use of this approach based on public comments and data in peer-reviewed literature. In the final recovery plan (Service, in prep.), we define spatially clustered Quino checkerspot butterfly observations as occurrence complexes. Based on our understanding of likely Quino movement patterns, occurrence complexes are estimated and mapped using a 1 km (0.6 mi) dispersal distance around recent butterfly occurrences. This method ensures inclusion of the habitat likely used by the butterflies in each observation. We have based this final critical habitat designation on these occurrence complexes. For portions of this final critical habitat designation (the Temecula/Murrieta/Oak Grove subunit and the Otay unit), we used a configuration of the mapped occurrence complexes that provided for landscape connectivity and viable Quino checkerspot butterfly metapopulations. In these two areas, we mapped the distribution of the occurrence complexes defined by the 1 km (0.6 mi) dispersal distance around recent butterfly occurrences and evaluated those intervening lands proximal to the complexes. Initially, we evaluated lands that were included in the proposal. For this final rule, we then defined critical habitat by first connecting the outer tangents of complexes, thereby including the essential lands among complexes, to form a cohesive unit that would provide for survival and conservation of regional populations. We made the determination that the lands among the complexes are essential based on knowledge of the ecology of the Quino checkerspot butterfly, the relationship of occurrence complexes to each other, interpretation of aerial photography, GIS land use coverage, and information from field visits. Finally, we excluded lands within the complex configuration that we knew were not essential, for example, developed areas greater than 2.0 ha (5.0 ac), and lands dominated by Tecate cypress woodland.

We then used these occurrence complexes to prepare initial maps of the final critical habitat units. Where occurrence complexes are relatively close to each other, within about 4.8 km (3 mi) of another occurrence complex, we prepared the initial unit maps by connecting the peripheries of all the nearby occurrence complexes. Based on what we understand about Quino checkerspot butterfly dispersal behavior, we believe the butterflies within these areas represent a regional metapopulation; the occurrence complexes may represent subpopulations of these metapopulations which are located close enough to other subpopulations to provide for recolonization in the event of local extirpation.

As we discussed above, 4.8 km (3 mi) is the maximum estimated 10-year recolonization distance using a stepping-stone dispersal model, based on results from the Morgan Hill bay checkerspot population (Harrison et al. 1988); that is, it is unlikely that populations located more than 4.8 km (3 mi) from the nearest known population play a significant role in maintaining a metapopulation (unless there are closer populations we have not yet identified). However, for specific reasons described below for each unit, we believe that several of these more isolated occurrence complexes are in areas essential to the conservation of the butterfly. We used a different approach, similar to that which we used in the proposed rule, to develop initial unit

maps for these isolated occurrences. In these cases, we initially evaluated areas that were included in the proposal and were within 4.8 km (3 mi) of each recent observation. We made the determination that the lands surrounding the complexes are essential based on knowledge of the ecology of the Quino checkerspot butterfly, interpretation of aerial photography, GIS land use coverage, and information from field visits. Finally, we excluded all lands within 4.8 km (3 mi) of occurrences that available data indicated were not essential, for example, agricultural areas greater than 2.0 ha (5.0 ac) and hills with very little vegetation dominated almost entirely by boulders and exposed rock. We believe that this identifies the minimum area needed to provide sufficient habitat to support the long-term conservation of the butterfly in these locations. This method was used to map isolated occurrence complexes in the Harford Springs subunit of Unit 1, the Brown Canyon subunit of Unit 2, and the Jacumba Unit.

For the Lake Mathews/Estelle Mountain Reserve subunit of Unit 1 that is currently not known to be occupied, we used a variation of the methodology based on the 4.8 km (3 mi) dispersal radii. In the proposed designation, we used the 4.8 km (3 mi) method based on 1982 occurrence data and expanded the subunit to include an additional portion of the Lake Mathews/Estelle Mountain Reserve to the south that was not captured. For this final designation, we limited critical habitat in this subunit to only those lands within the Lake Mathews/Estelle Mountain Reserve. This reserve captures the highest quality habitat known to remain within the dispersal radius and is the focal point of future recovery efforts (Service, in prep.).

For the development of this final designation we also took into consideration information provided through public comments, the draft and final economic analyses, and biological information that became available since the proposed designation was published. This latter information included data from the 2001 adult butterfly flight season, which corroborated and further supported decisions made during the development of the proposed designation in most cases. In general, the data from the 2001 flight season: (1) Provided additional support for the inclusion of areas into critical habitat that we determined to be essential during the development of the proposed rule; (2) indicated several areas believed to be essential but not known to be occupied were now, in fact, occupied (specifically in the northeastern portion of Unit 3); and (3) documented several new areas of occupancy outside of proposed critical habitat. These areas outside of proposed critical habitat, in which the Quino checkerspot butterfly has recently been documented (2001), have not been included in this final designation. These new occurrences are discussed later in the Critical Habitat and Summary of Comments and Recommendations sections of this final rule.

We identified and mapped areas essential to the conservation of the species using the configuration of occurrence complexes and the characteristics of essential habitat described above. The initial unit and subunit maps were based on interpretation of aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map) and current digital ortho-photography. We then revised these initial units based on other information, including boundaries of approved habitat conservation plans (HCPs), information developed through section 7 consultations, boundaries of active restoration efforts for the butterfly, and information obtained from ongoing analyses used for the development of reserve systems for future conservation plans that may cover the butterfly (*e.g.,* Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)). Additionally, in Riverside County (Units 1 and 2), we used an updated GIS land use coverage from the County of Riverside to exclude lands greater than or equal to 2.0 ha (5.0 ac) designated as urban or intense agriculture. A comparable updated GIS coverage was not available for use for San Diego County. However, we attempted to manually exclude areas of similar description from those critical habitat units (Units 3 and 4).

For the purpose of this designation, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD 27) coordinates derived from a 100-m grid that approximated the essential critical habitat line delineated from digital aerial photography with the exception of the Lake Mathews portion of Unit 1 and Unit 3 (Otay Unit). The Lake Mathews portion of Unit 1 was described referencing the Lake Mathews/Estelle Mountain Reserve. The Otay Unit was described using a combination of UTM coordinates and boundaries for the Multiple Habitat Preservation Area, the County of San Diego's pre-approved mitigation areas, the Major Amendment Areas, State and Federal lands, and State Route 94.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for Quino checkerspot butterfly conservation. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. However, this minimum mapping unit did not allow us to exclude all developed areas, such as buildings, paved or improved roads, aqueducts, railroads, other paved areas, lawns, large areas of closed canopy woody vegetation such as chaparral and cypress, active agricultural fields, and other urban landscaped areas that do not contain primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation unless they would affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat

The approximate area encompassing the designation of critical habitat for the Quino checkerspot butterfly by county and land ownership is shown in Table 1.

TABLE 1. APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP (AREA ESTIMATES REFLECT CRITICAL HABITAT UNIT BOUNDARIES.[1])

County	Federal [2]	Tribal	Local/State	Private	Total
Riverside	3,985 ha (9,850 ac)	525 ha (1,300 ac)	4,805 ha (11,875 ac)	29,945 ha (74,005 ac)	39,260 ha (97,030 ac)
San Diego	9,785 ha (24,175 ac)	0 ha (0 ac)	3,800 ha (9,395 ac)	16,595 ha (41,005 ac)	30,180 ha (74,575 ac)

TABLE 1. APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP (AREA ESTIMATES REFLECT CRITICAL HABITAT UNIT BOUNDARIES.[1])—Continued

County	Federal [2]	Tribal	Local/State	Private	Total
Total	13,770 ha (34,025 ac)	525 ha (1,300 ac)	8,605 ha (21,270 ac)	46,540 ha (115,010 ac)	69,440 ha (171,605 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, approximate hectares and acres have been rounded to the nearest 5.
[2] Federal lands include Bureau of Land Management (BLM, Department of Defense (DOD), National Forest, and Service lands).

Critical habitat includes Quino checkerspot butterfly habitat throughout the species' current range in the United States (*i.e.,* Riverside and San Diego Counties, California). Lands designated are under private, local, State, Federal, and Tribal ownership, with Federal lands including lands owned or managed by BLM, Forest Service, DOD, and the Service. Lands designated as critical habitat have been divided into four critical habitat units.

We are designating critical habitat on lands that are considered essential to the conservation of the Quino checkerspot butterfly. Using the recovery plan for guidance (Service, in prep.), we determine that an area is essential if it has one or more of the following characteristics: (1) Lands considered to be occupied within recovery unit boundaries that are part of occurrence complexes identified in the recovery plan (Service, in prep.); (2) lands that provide landscape connectivity among occurrence complexes; and (3) lands not known to be occupied that contain confirmed historic Quino checkerspot butterfly locations identified as essential in the recovery plan (Service, in prep.). In this final rule, we are designating approximately 2,450 ha (6,050 ac) of land within the Estelle Mountain Reserve in Unit 1 (western Riverside County) that is currently not known to be occupied by the Quino checkerspot butterfly.

Areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of the Quino checkerspot butterfly throughout its range and provide those habitat components essential for the conservation of the species. Critical habitat units are configured to provide for metapopulation dynamics, including dispersal, which, as stated in the recovery plan (Service, in prep.), are essential for the conservation of the species.

A brief description of each unit and the reasons for proposing to designate it as critical habitat are presented below.

Unit 1: Lake Mathews Unit

Unit 1 encompasses approximately 5,765 ha (14,250 ac) within the northwestern portion of Riverside County and occurs within the Northwest Riverside Recovery Unit described in the recovery plan. All habitat identified as essential in this recovery unit is being designated as critical habitat, except the habitat within the Lake Mathews MSHCP, which is being excluded under section 4(b)(2) of the Act (discussed below in the section entitled ''Exclusions Under Section 4(b)(2)''). Approximately 220 ha (540 ac) of this unit is Federal land, approximately 2,655 ha (6,565 ac) is State or local government land, and the remaining 2,890 ha (7,145 ac) is private land. This unit is divided into two subunits: The Harford Springs subunit and the Lake Mathews/Estelle Mountain Reserve subunit.

The Harford Springs subunit includes approximately 3,320 ha (8,200 ac) of lands, including Harford Springs County Park. Quino checkerspot butterflies were observed in Harford Springs County Park in 1998. This site was once part of a more extensive, well-documented distribution with one of the most well-known historic collection locations (*i.e.,* Lilly Hill). The Quino checkerspot butterfly was historically abundant in this area, with consistently high densities reported by collectors from the 1950s to the mid 1980s (Orsak 1978; K. Osborne and G. Pratt, pers. comm., 2000).

The Lake Mathews/Estelle Mountain Reserve subunit, about 2,450 ha (6,050 ac) in size, is currently not known to be occupied, but considered essential to the conservation of the species (Service, in prep.). This subunit contains the Lake Mathews population site. Quino checkerspot butterflies were last observed at the southern margin of Lake Mathews in 1982 (Carlsbad Fish and Wildlife Office GIS Quino checkerspot butterfly database and metafile) when dozens of butterflies were documented. Similar to the area containing the Harford Springs occurrence complex, the Quino checkerspot butterfly was historically abundant at this location. Essential habitat for the butterfly exists in the vicinity of Lake Mathews and within the Lake Mathews/Estelle Mountain Reserve established for the Stephens' kangaroo rat, which is directly south of the Lake (Service, in prep.). As discussed later in this rule, the lands within the Lake Mathews MSHCP, where the 1982 occurrences were documented, have been excluded from critical habitat designation because the Lake Mathews MSHCP provides coverage for the Quino checkerspot butterfly. The land, including the butterfly habitat, within the Lake Mathews/Estelle Mountain Reserve to the south is not currently managed for the Quino checkerspot butterfly. This area is considered essential and included in designated critical habitat because: (1) The butterfly was historically regionally abundant, as recently as 1982; (2) quality habitat containing the primary constituent elements exists; and (3) it is the focus of restoration and reestablishment efforts as described in the recovery plan (Service, in prep.).

The Harford Springs and Lake Mathews/Estelle Mountain Reserve subunits are characterized by diverse topography and high-quality habitat patches, with extensive, dense stands of dwarf plantain in open spaces within juniper woodland, coastal sage scrub, and grassland communities. Landscape connectivity still exists between Harford Springs County Park and the Lake Mathews area. The Lake Mathews/Estelle Mountain Reserve also contains possibly the ''largest continuous stand of dwarf plantain in Riverside County,'' south of Lake Mathews in the vicinity of Black Rocks, west of Monument Peak (K. Osborne, pers. comm., 2000).

Unit 2: Southwest Riverside Unit

Unit 2 encompasses approximately 34,780 ha (85,950 ac) within southwestern Riverside County and northern San Diego County. This critical habitat unit supports all or part of 21 of the 22 occurrence complexes identified as important to Quino checkerspot butterfly recovery in the southwestern Riverside region (Service, in prep.). Mapped portions of some of the complexes identified as important to

recovery in the final recovery plan (Service, in prep.) were not designated because those portions fell outside the proposed critical habitat. Under the Act and the Administrative Procedure Act (5 U.S.C. 702 & 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, we are unable to include this area in the final rule. This critical habitat similarly contains two subunits, the Brown Canyon subunit and the Temecula/Murrieta/Oak Grove subunit. All lands within this critical habitat unit (*i.e.,* both subunits) are considered to be occupied by the Quino checkerspot butterfly.

Unit 2 includes approximately 3,955 ha (9,775 ac) of Federal lands; an estimated 525 ha (1,300 ac) of lands within the Cahuilla Band of Mission Indians' Reservation, just north of the Silverado Ranch mitigation bank; approximately 2,150 ha (5,310 ac) of lands under State or local jurisdictional ownership; and an estimated 28,150 ha (69,565 ac) of lands in private ownership. We discuss the relationship of designated critical habitat for the Quino checkerspot butterfly to the inclusion of lands within the Cahuilla Band of Mission Indians' Reservation below (see the section ''Government-to-Government Relationship With Tribes'').

The Brown Canyon subunit encompasses approximately 4,915 ha (12,140 ac) of land east-southeast of the town of Hemet in Riverside County. This subunit contains the Brown Canyon occurrence complex, a persistent population identified as essential in the recovery plan (Service, in prep.). Because it is not proximal to other occurrence complexes in Unit 2, and may lack landscape connectivity with the main Temecula/Murrieta/Oak Grove subunit, this subunit has been defined using the 4.8 km (3 mi) dispersal radius to maintain a critical mass of habitat (refer to the Criteria Used To Identify Critical Habitat section of this final rule). The Brown Canyon occurrence complex is the northeastern-most complex within the current range of the butterfly, and is contiguous with the last remaining undeveloped landscape corridor to the northern portion of its former range. If the species is undergoing a northern range shift, as hypothesized (Parmesan 1996 as discussed in the draft recovery plan, Service 2001), this occurrence complex potentially represents the only remaining route for northern expansion of the species. Further, the resiliency of this population has not likely been compromised by habitat impacts associated with development and recreational use due to the insulation provided by surrounding hilly terrain and publicly owned lands.

The Temecula/Murrieta/Oak Grove subunit encompasses approximately 29,865 ha (73,810 ac) in southwest Riverside County. This unit stretches east from Interstate 215 near the towns of Murrieta and Temecula to the mountains and desert edge, north to near the town of Hemet in Riverside County, and south to Oak Grove Valley in San Diego County.

Recent observations have been recorded throughout the Temecula/Murrieta/Oak Grove subunit, indicating a degree of landscape connectivity throughout, especially in the less-urbanized eastern areas. Several large occurrence complexes are found within the subunit in the vicinity of Warm Springs Creek near the town of Murrieta, in the vicinity of Lake Skinner within the proposed Southwest Riverside County Multiple Species Reserve, and on BLM and pre-approved mitigation lands at Oak Mountain, near Wilson Valley, and south of the Cahuilla Band of Mission Indians' Reservation. The easternmost Quino checkerspot butterfly population is a recent extension of the known geographic and elevational range for the species (Pratt *et al.,* submitted). A new primary host plant for the species, white snapdragon, was documented in this area in 2001 and represents a vital element of habitat heterogeneity in the species' range. The Bautista Road occurrence complex (northeast of the town of Anza in Riverside County) occurs at the periphery of the known regional butterfly distribution within the recovery unit and outside of critical habitat. However, this occurrence complex is not included in designated critical habitat because it was first documented in 2001 following the publication of the proposal and we do not currently have sufficient information concerning habitat within the complex and landscape connectivity to other complexes to determine that it is essential to the conservation of the species.

Unit 3: Otay Unit

Unit 3 encompasses approximately 26,075 ha (64,430 ac) within the southwestern portion of San Diego County. Land ownership for this unit includes approximately 9,440 ha (23,330 ac) of Federal land, including 180 ha (450 ac) of the Naval Space Surveillance Station managed by the DOD and lands within the San Diego National Wildlife Refuge (SDNWR) Otay-Sweetwater Unit; approximately 3,620 ha (8,945 ac) under State or local jurisdictional ownership; and approximately 13,015 ha (32,155 ac) that are privately owned. All lands within this critical habitat unit are considered to be occupied by the Quino checkerspot butterfly.

Lands encompassed by this unit stretch south from the San Diego National Wildlife Refuge (SDNWR) Otay-Sweetwater Unit and State Route 94 to the international border with Mexico, west along Otay River Valley and the northern rim of Otay Mesa, and east to the town of Tecate. Unit 3 supports all or part of 12 of the 13 occurrence complexes identified in the final recovery plan (Service, in prep.) as important to recovery in southwestern San Diego County. Mapped portions of some of the complexes identified as important to recovery in the final recovery plan (Service, in prep.) were not designated because those portions fell outside the proposed critical habitat.

Recent Quino checkerspot butterfly observations are concentrated in lower elevation areas surrounding east Otay Valley, Otay Mountain, the Jamul Mountains, and San Miguel Mountain. The Otay Lakes area historically supported large populations that extended south to Otay Mesa and across the international border (White and Levin 1981, Murphy and White 1984). The western portion of this unit contains the only known occupied habitat with a marine climate influence, an environmental factor prevalent throughout most of the species' historic range and thought to be beneficial to population resilience because it provides climatic stability and higher average humidity, minimizing host plant susceptibility to drought (Service, in prep.). The Otay area west of the mountain, therefore, represents a vital element of habitat heterogeneity within the species' range.

The Dulzura Occurrence Complex was documented during the 2001 flight season outside of proposed critical habitat. Based on an initial analysis during the ongoing amendment process for the MSCP in late 2001, we determined that this occurrence complex is essential to the conservation of the Quino checkerspot butterfly. Under the Act and the Administrative Procedure Act (5 U.S.C. 702 & 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because the Dulzura Occurrence Complex was not in the proposed rule we are unable to include this area in the final rule. Due to the short court-ordered schedule for completing this designation and budgetary constraints, we are unable to re-propose critical habitat at this time.

It is important to note that the land that supports the Dulzura occurrence complex does not appear to be threatened by actions that may negatively affect the butterfly or its habitat. The land that supports this new occurrence complex is primarily in a designated wilderness area owned and managed by the BLM. Because of regulations governing designated wilderness areas (*e.g.,* minimizing development and off-road impacts), habitat essential to the Quino checkerspot butterfly is unlikely to be impacted by such threats. We will continue to work closely with BLM concerning the protection and management of the Quino checkerspot butterfly in this area. Further, as indicated, the occurrence complex is being considered in the current amendment process to the MSCP. If amended, the MSCP will provide for additional protections and management for the Quino checkerspot butterfly and its habitat. Furthermore, because the area is occupied by the butterfly, any actions that have a Federal nexus and may affect the butterfly will require consultation under section 7 of the Act.

Unit 4: Jacumba Unit

Unit 4 encompasses approximately 2,820 ha (9,970 ac) of land in southeastern San Diego County south of Interstate 8 in the vicinity of the town of Jacumba. This critical habitat unit supports the Jacumba occurrence complex identified as important to recovery in the recovery plan. Land ownership for this unit includes approximately 154 ha (380 ac) of Federal land, approximately 180 ha (450 ac) under State or local jurisdictional ownership, and approximately 2,485 ha (6,145 ac) under private ownership. All lands within this critical habitat unit are considered to be occupied by the Quino checkerspot butterfly.

The Jacumba occurrence complex occurs within the Southeast San Diego Recovery Unit described in the recovery plan (Service, in prep.). This apparently isolated population center occurs in a unique high-desert region of juniper woodlands, which provides a vital element of habitat heterogeneity in the species' range. Recent Quino checkerspot butterfly observations are concentrated northwest of the community of Jacumba in Anza Borrego Desert State Park and private lands. The metapopulation distribution likely extends south across the international border. Occupancy has been documented approximately 6 km (3.7 mi) to the south in El Condor (Baja California, Mexico) and the U.S. occurrence complex may belong to the same metapopulation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Quino checkerspot butterfly or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.,* from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical

habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the Quino checkerspot butterfly is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat.

Actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area affected by the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States, including vernal pool and other Quino checkerspot butterfly habitat areas in watersheds, by the Corps under section 404 of the Clean Water Act;

(2) Regulation of grazing, mining, and recreation by the BLM, Forest Service or the Service;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal land by BLM, Forest Service, DOD, and the Service;

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Construction of roads and fences along the International Border with Mexico and immigration enforcement activities by the Immigration and Naturalization Service/Border Patrol that take place in Quino checkerspot butterfly habitat;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Construction of communication sites licensed by the Federal Communications Commission;

(8) Activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency; and

(9) Construction of fire breaks by the BLM, Forest Service, Service, or other Federal agencies for the maintenance or control of fire management and suppression activities.

Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. In the area designated as critical habitat that is currently not known to be occupied by the Quino checkerspot butterfly, we already consult on other listed species, including the coastal California gnatcatcher (Polioptila californica californica) and the Stephens' kangaroo rat (Dipodomys stephensi), and have designated critical habitat. Thus, we do not anticipate a significant additional regulatory burden will result from the designation of critical habitat for the Quino checkerspot butterfly.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided such exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances, the benefits of excluding legally operative HCPs, for which the Quino checkerspot butterfly is a covered species and take has been authorized, from critical habitat designations will outweigh the benefits of including them.

1. Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities that may affect such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementing agreements. These HCPs and Implementing Agreements (IAs) include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application itself requires consultation under section 7 of the Act. As part of this process, we are required to evaluate the issuance of incidental take permits for a proposed action to ensure that the action as proposed would not jeopardize the continued existence of the species covered under the HCP or result in the destruction or adverse modification of designated critical habitat. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues will have been thoroughly addressed in the HCP and through consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will achieve the same result as consultations under the adverse modification standard.

Further, HCPs typically provide greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management, through the standards found in the joint Service and National Marine Fisheries Service HCP Handbook, 5-Point Addendum to the HCP Handbook (64 FR 35242), and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to implementing long-term special management or protections. Thus, a

consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the collection and development of additional biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, we believe that designation of critical habitat has little benefit in areas covered by approved and legally operative HCPs.

2. Benefits of Exclusion

The benefits of excluding HCPs from designation as critical habitat may be more significant than the benefits of including HCPs in critical habitat. Benefits include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Most regional plans benefit many species, both listed and unlisted. Imposing additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirm regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved and legally operative HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in which the Quino checkerspot butterfly is a covered species on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

Relationship to Habitat Conservation Plans

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we encourage development of HCPs for such areas on non-Federal lands. HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Quino checkerspot butterfly, while directing development and habitat modification to nonessential areas of lower habitat value.

Only HCPs within the boundaries of designated critical habitat units are discussed here. Those approved and legally operative HCPs that provide coverage and incidental take approval for the Quino checkerspot butterfly have been excluded from this designation. These include the Assessment District 161 Subregional HCP, the Rancho Bella Vista HCP, and the Lake Mathews MSHCP in Riverside County that provide coverage and incidental take authorization for the Quino checkerspot butterfly.

The Riverside County Assessment District 161 Subregional HCP, which authorizes take of the Quino checkerspot butterfly, has been completed and approved. This HCP includes protection measures for Quino checkerspot butterfly habitat, habitat restoration research, educational outreach, and captive propagation. The Rancho Bella Vista HCP also occurs within the Riverside County Assessment District 161, but an independent HCP was approved for this project. Although no Quino checkerspot butterflies have been observed within the project boundaries, the butterfly is known from adjacent occupied habitat patches and is covered by the Rancho Bella Vista HCP. This HCP provides for conservation of the Quino checkerspot butterfly through monitoring of this species, habitat and dispersal corridor preservation and management, and habitat restoration and enhancement.

The Lake Mathews MSHCP has been completed and approved by the California Department of Fish and Game (CDFG) and the Service. As explained below in the Summary of Comments section and the Recommendations and Summary of Changes from the Proposed Rule section, this HCP and accompanying section 10(a)(1)(B) permits provide for conservation and management of Quino checkerspot butterfly habitat and take authorization for the butterfly. Although the Quino checkerspot butterfly has not been recently observed (since 1982) within reserve boundaries, dozens of butterflies were documented within the reserve during the 1981 and 1982 adult butterfly flight seasons.

The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in implementation agreements for approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, excluding lands covered by HCPs in critical habitat designations outweigh the benefits of including lands covered by HCPs. Furthermore, we have determined in section 7 consultations on these approved HCPs that they would not jeopardize the continued existence of the Quino checkerspot butterfly, which means that they will not appreciably reduce likelihood of the survival and recovery of the species. Consequently, excluding these lands from the critical habitat designation will not result in the extinction of the species. Therefore, these lands have not been designated as critical habitat for the species.

Currently, there are several HCPs within the boundaries of designated critical habitat that are now under development or being amended to provide protection for the Quino

checkerspot butterfly and its habitat. These include the County of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan, the North San Diego County Subarea of the San Diego MSCP, and the Western Riverside MSHCP. These are discussed in more detail below.

The San Diego MSCP encompasses approximately 236,000 ha (582,000 ac) of southwestern San Diego County, and involves multiple jurisdictions. Approximately 69,600 ha (172,000 ac) are targeted to be conserved. We approved the overall MSCP and the City of San Diego's Subarea Plan in July 1997. The City of Poway's plan was approved in 1996; the County of San Diego's in 1998; San Diego Gas and Electric's in 1995; and the City of La Mesa's in 2000. Other jurisdictions, including the City of Chula Vista, are expected to complete their subarea planning processes in the near future. The Quino checkerspot butterfly is not a covered species for any of the approved subarea plans under the MSCP; therefore we are including areas essential to the conservation of the species that are covered by these subarea plans in designated critical habitat. However, both the County of San Diego and San Diego Gas and Electric are developing amendments to their permits to gain coverage for the Quino checkerspot butterfly, and the City of Chula Vista has included the Quino Checkerspot butterfly on its target list of species for coverage.

The Quino checkerspot butterfly is also a target species for the North San Diego County Subarea (Subarea) of the MSCP currently under development. This Subarea encompasses the area north of the MSCP planning areas and unincorporated lands east of the existing Multiple Habitat Conservation Program (another regional HCP currently being developed for northern San Diego County). Because the Quino checkerspot butterfly is not yet a covered species, we are including appropriate areas of this Subarea of the MSCP in this critical habitat designation.

The Western Riverside MSHCP was initiated by the County of Riverside on October 8, 1998. The planning area encompasses 530,000 ha (1.3 million ac) and is proposed to include conservation measures for over 100 species, including the Quino checkerspot butterfly. Currently, 12 cities within the western portion of Riverside County have endorsed, and will participate in, this planning effort. A draft Western Riverside MSHCP is proposed to be released for public review in 2002. Because this HCP is not yet completed, we are including lands within the planning area in this critical habitat designation.

Habitat conservation plans currently under development or being amended are intended to provide for the protection and management of habitat areas essential to the conservation of the Quino checkerspot butterfly, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for additional data collection and analysis regarding the use of particular habitat areas by the Quino checkerspot butterfly. The HCP process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of linked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.,* counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species. We fully expect that our analyses of proposed HCPs will show that covered activities carried out in accordance with the provisions of the HCPs and accompanying section 7 biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify appropriate conservation and management actions. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule and provide for the conservation of the covered species. If an HCP or HCP amendment that addresses the Quino checkerspot butterfly is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise the designation. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Summary of Comments and Recommendations

In the February 7, 2001, proposed critical habitat designation (66 FR 9476), we requested all interested parties submit comments on specifics of the proposal, including information related to biological justification, policy, treatment of HCPs, and proposed critical habitat boundaries. The first comment period closed on April 9, 2001. The comment period was reopened from June 20, 2001, to July 30, 2001 (66 FR 33046), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed designation. Comments received after the close of this latter comment period were determined not to provide substantive comment that had not already been raised or addressed and entered into the supportive record for this rulemaking.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers in southern California: San Diego Union Tribune and Riverside Press Enterprise on February 9, 2001, and again in both papers on June 20, 2001. In addition to inviting public comment on the proposed designation and the draft economic analysis for the proposed designation, the later notices announced the dates and times of public hearings on the proposed designation. These hearings were held on July 17, 2001, in Escondido, California from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We requested five biologists, who have knowledge of the Quino checkerspot butterfly and its ecology, peer review the proposed critical habitat designation. None of the peer reviewers submitted comments on the proposed critical habitat designation.

We received a total of 37 written comments during the two comment periods. Comments were received from 2 Federal agencies, 4 local agencies, and 22 separate private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Quino checkerspot butterfly. Similar comments were grouped into three general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. Comments were either incorporated directly into the final rule or final

addendum to the economic analysis or addressed in the following summary.

Issue 1: Biological Justification and Methodology

1. *Comment:* Several commenters requested that we take into consideration data collected from the 2001 adult butterfly flight season, as the best available science, while developing the final designation of critical habitat.

Our Response: As stated in several sections of this final designation, including the Methods and Summary of Changes from the Proposed Rule, we relied on data from the 2001 flight season to develop the boundaries of final critical habitat for the Quino checkerspot butterfly. Data from the 2001 flight season, for the most part, corroborated decisions made during the development of the proposed critical habitat, and identified several new areas of occupancy outside of lands defined in the proposal. These areas outside of the proposed critical habitat, in which the Quino checkerspot butterfly was documented for the first time in 2001, have not been included in the final designation for reasons discussed in the Critical Habitat section of this rule.

2. *Comment:* The scale of proposed critical habitat for the Quino checkerspot butterfly is overly broad, resulting in vague unit boundaries. Several commenters questioned the biological justification for proposing critical habitat for the Quino checkerspot butterfly using such a landscape-scale approach when they believed that more precise information is available for use by the Service. Furthermore, several commenters voiced concern that their property was within proposed critical habitat boundaries for the Quino checkerspot butterfly even though their land contained no butterflies or primary constituent elements.

Our Response: We recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the Quino checkerspot butterfly. Due to time constraints, and the absence of more detailed map information during the preparation of the proposed and final designations, we used a 100-m UTM grid and reserve boundaries to describe the boundaries of critical habitat. Additionally, we have revised and refined our approach to mapping Quino checkerspot butterfly critical habitat. Some lands included in the proposed designation have not been included in this final designation. Based on our refined methodology, we included only those lands that we believe to be essential to the conservation of the Quino checkerspot butterfly in the final designation of critical habitat.

In developing the final designation, we made an effort to minimize the inclusion of nonessential areas that do not contain the primary constituent elements for the butterfly. However, due to our mapping scale, some areas not essential to the conservation of the Quino checkerspot butterfly were included within the boundaries of final critical habitat. These areas, such as towns, housing developments, or other developed lands are unlikely to provide habitat for the butterfly. Because they do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

3. *Comment:* The descriptions of the primary constituent elements of critical habitat for the Quino checkerspot butterfly are vague.

Our Response: The description of the primary constituent elements for the Quino checkerspot butterfly was based on the best available scientific and commercial data regarding the species, including a compilation of data from peer-reviewed published literature, unpublished or non-peer-reviewed survey and research reports, opinions of biologists knowledgeable about the Quino checkerspot butterfly and its habitat, and the draft recovery plan. We have updated the biological information, including the primary constituent elements, based on the 2001 adult butterfly flight season and refined their description in response to public comment. The primary constituent elements, as described in this final rule, represent our best estimate of what habitat components are essential for the conservation of the species. Please refer to the Primary Constituent Elements section of this final rule for a more detailed discussion of the primary constituent elements for the Quino checkerspot butterfly.

4. *Comment:* The proposed rule inappropriately uses a ''recovery standard'' to determine critical habitat, resulting in the inclusion of large areas in which the Quino checkerspot butterfly is not known to occur or have occurred. The Service ignores the intent of Congress to designate only occupied areas and those areas essential to a species' conservation, and the Service has failed to determine if these unoccupied areas are essential to the Quino checkerspot butterfly.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes ''(i) specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.'' The term ''conservation,'' as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.''

The draft recovery plan (Service 2001) and the final recovery plan (Service, in prep.) detail efforts required to meet recovery needs of the Quino checkerspot butterfly, and provide a description of habitat attributes essential to the survival and recovery of the species. We did not include all areas currently occupied by butterfly, but designated those areas that possess core populations, have unique ecological characteristics, and/or represent the historic geographic areas where the species can be re-established. After weighing the best available information, including both the draft and final (Service, in prep.) versions of the recovery plan, we conclude that the areas designated by this final rule, including areas that are not known to be currently occupied, are essential for the recovery of the species and eventual removal from the List of Endangered and Threatened species.

5. *Comment:* Several commenters were concerned with the methodology by which we defined areas that we believed to be occupied in the proposed designation of critical habitat.

Our Response: In the proposed designation of critical habitat for the Quino checkerspot butterfly we used a 4.8 km (3 mi) radius from each occurrence to define occupancy and lands essential to the conservation of the butterfly. This distance was based on the maximum recolonization distance over a 10-year period of a peripheral (island) habitat patch from the core (mainland) patch documented in the Morgan Hill bay checkerspot metapopulation (Harrison *et al.* 1988). Following the proposal, we re-evaluated how we defined occupancy in those areas.

For this final rule, we mapped known occurrences using a 1 km (0.6 mi) dispersal distance around recent

butterfly observations. Occurrences within 2 km (1.2 mi) of each other, where the 1 km (0.6 mi) dispersal radii intersect, are considered part of the same occurrence complex. To map the critical habitat units for this final designation we connected the outer periphery of nearby occurrence complexes. The specific, final configuration around these complexes is based on local and regional habitat variability, final recovery plan (Service, in prep.) recommendations, and on-going restoration and re-establishment efforts for the butterfly that provide for viable Quino checkerspot butterfly metapopulations.

6. *Comment:* Several commenters were concerned that we based much of our information pertaining to dispersal distance, and therefore, occupancy and critical habitat, on research done with a surrogate species, the bay checkerspot butterfly.

Our Response: In the biological sciences, information is not always known concerning the biology, ecology, behavior, etc., of each plant or animal species. In cases when information is lacking on a species of interest, it has been a common practice of scientists to extrapolate trends, or other relevant data, from research that has been conducted on similar species. Because research on the Quino checkerspot butterfly is limited, much of data we use concerning biological and ecological trends, including behavior, has been extrapolated from research on other subspecies of Edith's checkerspot, especially the ecologically similar bay checkerspot butterfly.

As discussed in the background section of this rule, researchers have spent over three decades conducting extensive focused research on Edith's checkerspot subspecies, in particular the federally listed bay checkerspot butterfly. While an extraordinary amount of information is available on Edith's checkerspot in general, specific information on the Quino checkerspot is sparse (Murphy and White 1984, Mattoni *et al.* 1997, Osborne and Redak 2000), including only two formal ecological studies (White and Levin 1981, Osborne and Redak 2000). Therefore, much of the information on which we have based the recovery and management strategy for the Quino checkerspot butterfly, as discussed in the final recovery plan (Service, in prep.), and critical habitat designation comes from research on other subspecies of Edith's checkerspot. Because of the biological and ecological similarities between these two subspecies of Edith's checkerspot, including shared host plant species, a primarily coastal (historic) distribution, and similar within-patch dispersal behavior (Mattoni *et al.* 1997, White and Levin 1981), we are confident that the bay checkerspot is a reasonable surrogate species from which to extrapolate the results of research. We believe this is among the best scientific information available for designation of critical habitat for the Quino checkerspot butterfly.

Issue 2: Policy and Regulations

7. *Comment:* Several commenters indicated that our reevaluation of the prudency of designating critical habitat for the Quino checkerspot butterfly was arbitrary.

Our Response: In our final rule listing the Quino checkerspot as endangered under the Act (62 FR 2313), we found that designation of critical habitat was not prudent because we believed that designation could increase the degree of threats to the species and would not provide any benefit. As we discuss in the Previous Federal Action section of this final rule, we were challenged on our original not-prudent finding. On February 16, 2000, we agreed to a stipulated settlement that required us to re-evaluate the existing not-prudent finding. The proposed rule detailed our reasons for determining that critical habitat is, in fact, prudent for the Quino checkerspot butterfly. We prepared this analysis in accordance with the Act and recent relevant case law regarding application of the ''not prudent'' exception to designating critical habitat.

8. *Comment:* We did not provide for adequate public notice of the proposed rule and sufficient opportunity for public comment.

Our Response: We published the proposed rule to designate critical habitat for the Quino checkerspot butterfly on February 7, 2001 (66 FR 9476), and accepted comments from the public for 60 days, until April 9, 2001. The comment period was reopened from June 20, 2001, to July 30, 2001 (66 FR 33046), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat. Comments received following the close of the first comment period, but prior to the opening of the second comment period, were addressed and entered into the supportive record for this rulemaking as part of the second comment period.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers in southern California: San Diego Union Tribune and Riverside Press Enterprise on February 9, 2001, and again in both papers on June 20, 2001. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. We also published the draft economic analysis and associated material on our Fish and Wildlife Office internet site following the draft's release on June 20, 2001. In addition to inviting public comment on the proposed designation and the draft economic analysis for the proposed designation, the later notices announced the dates and times of public hearings on the proposed designation. These hearings were held on July 17, 2001, in Escondido, California from 1 to 3 p.m. and 6 to 8 p.m. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

9. *Comment:* Several commenters indicated that we violated the Administrative Procedure Act because the proposal does not provide adequate description of the location of critical habitat units for impacted landowners, causing a burden to landowners who must determine which portions of their land contain critical habitat.

Our Response: We identified specific areas in the proposed determination that are referenced by UTM coordinates, which are found on standard topographic maps. We also made available, during the public comment period at the Carlsbad Fish and Wildlife Office, a public viewing room where the proposed critical habitat units, superimposed on 7.5 minute topographic maps, could be inspected. Furthermore, we distributed geographic data and maps of the proposed critical habitat to individuals, organizations, local jurisdictions, and State and Federal agencies that requested them. We believe the information made available to the public was sufficiently detailed to allow for determination of critical habitat boundaries. This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). The accompanying maps are for illustration purposes only. If additional clarification is necessary, contact the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

10. *Comment:* An Environmental Impact Statement, as defined under National Environmental Policy Act of 1969 (NEPA), should be written to address the potential significant impacts of the proposed designation of Quino checkerspot butterfly critical habitat.

Our Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

11. *Comment:* The Bureau of Indian Affairs commented on behalf of the Cahuilla Band of Mission Indians requesting that the portion of their Reservation in Riverside County included in the proposed designation be excluded from the final designation based on the provision contained within Secretarial Order 3206.

Our Response: As we discuss in the section on Government-to-Government Relationship with Tribes of this final rule, the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to conserve a listed species. The Secretarial Order further states that in designating critical habitat, ''the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.''

In our proposed critical habitat rule, we indicated that approximately 4,405 ha (10,890 ac) of lands within the Cahuilla Band of Mission Indians' Reservation in western Riverside County were essential for the conservation of the Quino checkerspot butterfly. This determination was based on the close proximity of two butterfly occurrence complexes—the Silverado and Southwest Cahuilla complexes—and the continuity of butterfly habitat adjacent to and along the southern portion of the Reservation. We are committed to developing a positive working relationship with the Tribe and will continue attempting to work with them to develop conservation measures for the butterfly. However, due to the time constraints for completing this final rule, we were required to finalize the designation based on our own analysis of the relative importance of the lands within the Cahuilla Band of Mission Indians' Reservation for the conservation of the Quino checkerspot butterfly.

Additional information corroborating the distribution of the species, relative to the Reservation, became available following the publication of the critical habitat proposal. During the 2001 Quino adult flight season, an additional population of Quino checkerspot butterfly was identified in close proximity to the southern boundary of the Reservation. This occurrence complex has been labeled the Tule Peak complex. Consequently, based on data from the 1998 through the 2001 flight seasons, there are an estimated 226 butterfly occurrences grouped into three occurrence complexes adjacent to the southern boundary of the Reservation. These complexes include the majority of documented Quino checkerspot butterflies in the eastern portion of western Riverside County and constitute one or more significant and substantial regional core populations of the species.

Based on the proximity of these occurrence complexes to the Reservation and the apparent continuity of butterfly habitat from the complexes across much of the Reservation, we have determined that lands on the Reservation defined by the occurrence complexes that support the primary constituent elements for the Quino checkerspot butterfly are essential to the conservation of this species and are therefore designated as critical habitat. Based on the distribution and dispersal of the Quino checkerspot butterfly and our analysis of areas essential for the conservation of this species, we have reduced the area designated as critical habitat to 525 ha (1,300 ac) on the Cahuilla Band of Mission Indians' Reservation.

12. *Comment:* Several commenters stated that critical habitat should be retained within the boundaries of approved HCPs covering the Quino checkerspot butterfly. They felt that HCPs cannot be viewed as a functional substitute for critical habitat designation, and the approved HCPs provided inadequate protection and special management considerations for the species and their habitat. Other commenters supported the exclusion of approved HCPs covering the Quino checkerspot butterfly from critical habitat designation, and several of these same commenters wanted pending HCPs to be excluded as well. They supported their recommendations by asserting that landowners will be reluctant to participate in HCPs unless they have incentives, including the removal of critical habitat from HCP boundaries.

Our Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. However, HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which the Quino checkerspot butterfly is a covered species, take of the butterfly is authorized under an incidental take permit, and the plan provides provisions for long-term conservation. These include the following HCPs in Riverside County: Assessment District 161 Subregional HCP, Rancho Bella Vista HCP, and the Lake Mathews MSHCP. There are no currently approved and legally operative HCPs in which the Quino checkerspot butterfly is a covered species in San Diego County. However, several are working on amendments to their HCPs that will provide coverage for the butterfly. These amendments are not yet complete.

We anticipate that future HCPs in the range of the Quino checkerspot butterfly will include it as a covered species and provide for its long term conservation. We expect that HCPs undertaken by local jurisdictions (*e.g.,* counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the Quino checkerspot butterfly. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the Quino checkerspot

butterfly is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the Quino checkerspot butterfly as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). The development of new HCPs or NCCPs should not be affected by designation of critical habitat primarily because we view the standards of jeopardy for listed species and of adverse modification for critical habitat as being virtually identical. We discuss these standards in detail in the Section 7 Consultation section portion of this document.

13. *Comment:* One commenter requested that the Lake Mathews MSHCP be removed from the final designation because it is an approved HCP that provides coverage for the Quino checkerspot butterfly.

Our Response: As discussed in two sections of this final rule, Relationship To Habitat Conservation Plans and Summary of Changes from the Proposed Rule, we reviewed the approved HCP and accompanying Implementation Agreement. We found that the Lake Mathews MSHCP: (1) Is an approved and legally operative HCP in which the Quino is a covered species, (2) provides take authorization for the Quino checkerspot butterfly, and (3) provides special management considerations for and protection of Quino habitat. Consequently, we believe that the Lake Mathews MSHCP meets the criteria for exclusion under section 4(b)(2) of the Act and has therefore been excluded from final critical habitat for the Quino checkerspot butterfly.

14. *Comment:* One commenter expressed concern over the inclusion of El Sobrante landfill HCP planning area in final critical habitat.

Our Response: Portions of the El Sobrante landfill have been excluded from the final critical habitat designation because they do not contain habitat essential to the conservation of the Quino checkerspot butterfly. However, because the Quino checkerspot butterfly is not a covered species in the HCP, those lands within the HCP planning area that are believed to be essential to the conservation of the butterfly are included in final critical habitat.

15. *Comment:* The Cleveland National Forest expressed concern over the inclusion of the Oak Grove fire station and other Forest Service facilities in proposed critical habitat.

Our Response: As a result of using the configuration of occurrence complexes defined by 1 km (0.6 mi) around essential core butterfly populations to delineate lands essential to the conservation of the Quino checkerspot butterfly, the Oak Grove fire station and other Forest Service facilities are not included in this final designation of critical habitat.

16. *Comment:* One of the members of the Quino checkerspot butterfly recovery team expressed concern over the exclusion of Spring Canyon and the majority of the West Otay Mesa occurrence complex from proposed critical habitat.

Our Response: The West Otay Mesa occurrence complex was discovered during the 2001 adult butterfly flight season, after the publication of the proposed critical habitat. We evaluated this occurrence complex to determine if it was essential to the conservation of the butterfly and should be included in critical habitat through a re-proposal. Currently, we do not have sufficient information concerning this occurrence complex to determine that it is essential to the conservation of the Quino checkerspot butterfly. Therefore, based on available information, we have not included Spring Oak Canyon and portions of the West Mesa occurrence complex in designated critical habitat.

17. *Comment:* Several commenters expressed concern that the proposed designation of critical habitat for the Quino checkerspot butterfly included areas with existing pipelines, aqueducts, and similar water exchange facilities. They believed that if these lands were designated as critical habitat, the maintenance of these facilities would be negatively affected. Therefore, they requested that these lands be excluded from critical habitat.

Our Response: Existing pipelines and aqueducts generally lack the primary constituent elements for the Quino checkerspot butterfly. Facilities that remain within the boundaries of this final determination are considered to be critical habitat. Periodic maintenance of existing pipelines, roads, or aqueducts would not constitute an adverse effect to critical habitat when primary constituent elements are not affected. If maintenance activities would adversely affect primary constituent elements, and a Federal nexus existed, then a consultation pursuant to section 7 may be required.

18. *Comment:* One commenter expressed concern over the use of Service files, in particular those of the Carlsbad Fish and Wildlife Office (CFWO), to extrapolate future consultations, project modifications, and re-initiate consultations based on consultation histories for the purpose of evaluating the potential economic effects of the designation. The commenter cited the findings of a recent Government Accounting Office report that indicated that files at the CFWO were unorganized, incomplete, and poorly managed.

Our Response: As a result of the Government Accounting Office's review of the CFWO's files and the subsequent report indicating some weaknesses in file management, we have instituted an electronic file management system that has corrected many of the apparent weaknesses. Because the Quino checkerspot butterfly has only been listed since 1997 and has been a highly scrutinized listed species, files and information relevant to the butterfly have been, and are, well organized, complete, and properly managed. Therefore, we, the Division of Economics, and Industrial Economics, Inc. have a high level of confidence in information extrapolated from those files. Additionally, as discussed in the draft economic analysis, estimates of costs attributable to future consultations and project modifications are averaged from data collected at Fish and Wildlife Offices across the country.

19. *Comment:* Some landowners expressed concern that because their property was located within critical habitat for the Quino checkerspot butterfly they would be subject to additional constraints under the California Environmental Quality Act (CEQA).

Our Response: According to 15065 (California Code of Regulations Title 14, Chapter 3) of CEQA guidelines, environmental impact reports are required by local lead agencies when, among other things, a project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species.'' Though federally listed species are presumed to meet the CEQA definition of ''endangered, rare or threatened species'' under 15380 (California Code of Regulations Title 14, Chapter 3), no additional constraints should result from the designation of critical habitat beyond that now in place for all federally listed species, including the Quino checkerspot butterfly.

20. *Comment:* Several commenters asserted that because more than 89 percent of Quino checkerspot butterfly sightings through the 2000 adult flight season occurred within the preserve areas (MHPA) for the San Diego MSCP, critical habitat should be limited to the preserve areas. They further contended that lands outside of the MHPA are not necessary, nor essential, and therefore, should not be designated as critical habitat for the butterfly in the region.

Our Response: While there may be considerable overlap between those areas we have designated as critical habitat and the boundaries of the MHPA and pre-approved mitigation areas, the MHPA and pre-approved mitigation areas were not originally drawn to take into consideration the conservation needs of the Quino checkerspot butterfly. We are now in the process of re-assessing the boundaries of the MHPA relative to the Quino checkerspot butterfly through the amendments to the MSCP for coverage of the butterfly to ensure that lands essential to the conservation of the butterfly are captured within the MHPA.

Issue 3: Economic Issues

21. *Comment:* Several commenters expressed concern that the proposed rule was not accompanied by an economic analysis as required by law.

Our Response: Pursuant to section 4(b)(2) of the Act, we are to evaluate, among other relevant factors, the potential economic effects of the designation of critical habitat for the Quino checkerspot butterfly. We published our proposed designation in the **Federal Register** on February 7, 2001 (66 FR 9476). At that time, our Division of Economics and their consultants, Industrial Economics, Inc., initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on June 30, 2001 (66 FR 33046). Following a 30-day public comment period on the proposal and draft economic analysis, a final addendum to the economic analysis was proposed. Both the draft economic analysis and final addendum were used in the development of this final designation of critical habitat for the Quino checkerspot butterfly. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

22. *Comment:* Several commenters were concerned that our economic analysis was incorrect to assume that a Regulatory Flexibility Analysis was not required or that we did not appropriately address potential economic effects of the designation.

Our Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will, in fact, not have a significant economic impact on a substantial number of small entities and, as a result, we do not need to prepare either an initial or final regulatory flexibility analysis. Please refer to the Economic Analysis and Regulatory Flexibility Act sections of this rule for further discussions concerning the potential economic effects of this designation.

23. *Comment:* Several commenters stated that we should have analyzed the cumulative effect of the critical habitat designation for the Quino checkerspot butterfly along with the effect of existing and proposed critical habitat for other species in the area.

Our Response: The commenters appear to be using the term ''cumulative impacts'' in the context of the National Environmental Policy Act. This is not appropriate in analyzing the effects of a regulation designating critical habitat for a listed species. We are required to consider only the effect of the proposed government action, which in this case is the designation of critical habitat for the Quino checkerspot butterfly. The appropriate baseline for use in this analysis is the regulatory environment without this regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with this designation of critical habitat. When critical habitat for other species has already been designated, it is properly considered part of the baseline for this analysis. Proposed and future critical habitat designations for other species in the area will be part of separate rulemakings, and consequently, their economic effects will be considered separately.

24. *Comment:* Several commenters expressed concern that the draft economic analysis failed to consider the effect the critical habitat designation for the Quino checkerspot butterfly would have on the demand for new housing and land values, and that the economic analysis ignores the impact of the designation on California's critical housing shortage.

Our Response: We are aware that some of the land that we are designating as critical habitat for the Quino checkerspot butterfly faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to some type of Federal nexus before work actually begins. As a result, we expect that future consultations will, in part, include planned and future real estate development.

We included additional analysis of these impacts in the addendum to the economic analysis. Estimates of acres likely to become urbanized over ten years were derived from California Urban and Biodiversity Analysis (CURBA) model estimates. A sensitivity analysis of these figures found that changing the model results by 25 percent or less resulted in a very small change in the number of estimated consultations due to the designation. Planners at the San Diego Planning and Land Use Department, Land Use and Environment Group (LUEG) state that, in these areas, development pressure is primarily from large landowners requesting permits for residential developments (Planner, San Diego Department of Planning and Land Use, pers. comm., March 22, 2001). Thus, as a conservative estimate, this analysis assumes that all urbanized acres will be developed as residential housing projects. The low consultation estimate assumes that proposed projects will average 100 acres in size, and that 20 percent of proposed projects will have a Federal nexus and primary constituent elements (PCEs). These figures are based on historical evidence from Quino checkerspot surveys and estimates of typical project size by the Service and others. The high estimate assumes that proposed projects will average 75 acres in size, and that 80 percent of these projects will have a Federal nexus and PCEs. Thus, the high estimate is likely to represent an upper bound estimate of the number of likely future consultations. This calculation results in an estimate of approximately 19 to 98 consultations on the Quino checkerspot over the next ten years regarding residential or light commercial development projects. Total costs for such consultations are estimated to be approximately $190,000 to $1,587,000. As noted in the draft economic analysis, project modifications are assumed to include the following project modifications: Habitat mitigation, captive breeding programs (0 to 50 percent of consultations), biological monitor present, pre-construction

surveys, signage, no night lighting, and construction season limits. Total costs of project modifications are estimated at $3.9 to $38.1 million.

However, we believe that these resulting consultations will not take place solely with respect to critical habitat issues. While it is true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation or a section 10 permit regardless of the critical habitat designation because areas other than those covered by the reserve are occupied by the butterfly or other federally listed species, including the coastal California gnatcatcher (*Polioptila californica californica*), Stephens' kangaroo rat (*Dipodomys stephensi*), Munz' onion (*Allium munzii*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and arroyo toad (*Bufo californicus*). As we have previously mentioned, section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out may affect a listed species or adversely modify its critical habitat.

25. *Comment:* Some commenters felt that the economic analysis is flawed because it is based on the premise that we have proposed designating only occupied habitat as critical habitat.

Our Response: The determination of whether or not proposed critical habitat is within the geographic range occupied by the Quino checkerspot butterfly is part of the biological decision-making process and lies beyond the scope of an economic analysis. Please refer to the Methods and Criteria Used To Define Critical Habitat Units sections of this rulemaking for a discussion of the decision-making process.

26. *Comment:* The assumption that future section 7 consultations would not be subject to regulatory uncertainty and legal challenge, and that the designation of critical habitat will cause no impacts above and beyond those caused by listing the species is faulty, legally indefensible, and contrary to the Act. ''Adverse modification'' and ''jeopardy'' are different, will result in different impacts, and should be analyzed as such in the economic analysis.

Our Response: We agree with the commenter's assertion that ''jeopardy'' and ''adverse modification'' represent different standards. However, the outcome of a consultation using one standard may be very similar to that of a consultation under the other. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for the recovery of the listed species. Common to both definitions is an appreciable detrimental effect on recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly where, as here, designation of critical habitat is primarily limited to habitat within the geographic range occupied by the Quino checkerspot butterfly.

27. *Comment:* Several commenters stated that the assumptions in the draft economic analysis suggesting that the designation of critical habitat for the Quino checkerspot butterfly is not expected to result in significant restrictions in addition to those currently in place due to the butterfly being federally listed are flawed.

Our Response: In the proposed rule and draft economic analysis, we indicated that we do not expect that the designation of critical habitat would provide significant additional regulatory or economic burdens or restrictions incremental to those afforded the species pursuant to the Act. This assertion is based on the regulatory protections afforded the butterfly and the fact that most of the lands (96.5 percent) designated as critical habitat are considered occupied by the species. Additionally, the lands which are not currently known to be occupied that are included in the designation because of future re-establishment efforts are within the Lake Mathews/Estelle Mountain Reserve in Unit 1. For additional information please refer to our draft economic analysis and final addendum to the economic analysis and the Regulatory Flexibility section of this final rule.

28. *Comment:* Several commenters stated that the draft economic analysis only looked at ''current and planned'' land uses and ignored the designation's impact on future, not yet planned uses.

Our Response: In our economic analysis, we attempted to estimate economic impacts that are reasonably certain to result from designation of critical habitat for the Quino checkerspot butterfly over a ten-year period. Consideration of unplanned and unforeseeable future costs and benefits would be purely speculative and would not add anything of appreciable value to the economic analysis of this rulemaking. For further information concerning our economic analysis and potential economic impacts resulting from the designation discussed therein, please refer to the Economic Analysis and Required Determinations sections of this final rule. Additional copies of the draft economic analysis and final addendum to the draft economic analysis are available from the Carlsbad Fish and Wildlife Office (refer to **ADDRESSES** section).

29. *Comment:* Several commenters expressed concern over the fact that they did not believe that our draft economic analysis evaluated the potential economic effects of the designation consistently with the recent 10th Circuit Court ruling on the southwestern willow flycatcher critical habitat.

Our Response: On May 11, 2001, the U.S. Court of Appeals in the Tenth Circuit issued a ruling that addressed the analytical approach used by the Service to estimate the economic impacts associated with the critical habitat designation for the southwestern willow flycatcher. Specifically, the court rejected the approach used by the Service to define and characterize baseline conditions. Defining the baseline is a critical step within an economic analysis, as the baseline in turn identifies the type and magnitude of incremental impacts that are attributed to the policy or change under scrutiny. In the flycatcher analysis, the Service defined baseline conditions to include the effects associated with the listing of the flycatcher and, as is typical of many regulatory analyses, proceeded to present only the incremental effects of the rule.

The court's decision, in part, reflects the uniqueness of many of the more recent critical habitat rulemakings. The flycatcher was initially listed by the Service as an endangered species in 1995, several years prior to designating critical habitat. Once a species has been officially listed as endangered under the Act, it is afforded special protection under Federal law. In particular, it is illegal for any one to ''take'' a protected species once it is listed. ''Take'' is defined to mean harass, harm pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Implementing regulations

promulgated by the Service further define ''harm'' to mean ''* * * an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.''

Because the southwestern willow flycatcher was initially listed as endangered by the Service in 1995, several years before the designation of critical habitat, the flycatcher, along with its habitat, already received considerable protection before the designation of critical habitat in 1997. As a result, the economic analysis concluded that the resulting impacts of the designation would be insignificant. This conclusion was based on the facts that: (1) The designation of critical habitat only requires the Federal government to consider whether their actions could adversely modify critical habitat; and (2) the Federal government already was required to consult on actions that may adversely affect the flycatcher and to ensure that its actions did not jeopardize the flycatcher.

For a Federal action to adversely modify critical habitat the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat in both the survival and recovery of the species. However, the Service defines jeopardy, which was a pre-existing condition prior to the designation of critical habitat, as to ''engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.'' The ''survival and recovery'' standard is used in the definition of both terms and as a result, the additional protection afforded the flycatcher due to the designation of critical habitat was determined to be negligible.

The court, however, considered why Congress would want an economic analysis performed by the Service when making a decision about designating critical habitat if, in fact, the designation of critical habitat adds no significant additional protection to a listed species. In the court's mind, ''(b)ecause (the) economic analysis done using the Service's baseline model is rendered essentially without meaning by 50 CFR 402.02, we conclude Congress intended that the Service conduct a full analysis of all of the economic impacts of a critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes.''

Even though the court's ruling applies only to the designation of critical habitat for the southwestern willow flycatcher, this analysis attempts to comply with the court's instructions by revising the approach to defining baseline conditions within the areas of proposed critical habitat. This approach to baseline definition employed in the analysis of the designation of critical habitat for the Quino checkerspot butterfly is similar to that employed in previous approaches in that the goal is to understand the incremental effects of a designation. However, it does provide more extensive discussion of pre-existing baseline conditions than previous critical habitat economic analyses. Typical economic analyses concentrate mostly on identifying and measuring, to the extent feasible, economic effects most likely to occur because of the action being considered. Baseline conditions, while identified and discussed, are rarely characterized or measured in any detailed manner because, by definition, these conditions remain unaffected by the outcome of the decision being contemplated. While the goal of this analysis remains the same as previous critical habitat economic analyses, that is to identify and measure the estimated incremental effects of the proposed rulemaking, the information provided in this analysis concerning baseline conditions is more detailed than that presented in previous studies. The final addendum to this analysis provided further information concerning the baseline and potential incremental effects of the designation of critical habitat for the Quino checkerspot butterfly.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat and economic analysis for the Quino checkerspot butterfly, we reevaluated our proposed designation of critical habitat for this species. The primary changes include the following: (1) Revising the mapping using the distribution of occurrence complexes (based on 1 km (0.6 mi) radii of recent observations) known to be essential for viable Quino checkerspot butterfly populations in this final rule (except for the isolated populations at Jacumba, Brown Canyon, and Lake Mathews), instead of the 4.8 km (3 mi) dispersal distance used in the proposal to define lands essential to the conservation of the butterfly (refer to the Criteria Used To Identify Critical Habitat section of this rule for a more detailed discussion of this revised methodology); (2) the removal of the Lake Mathews MSHCP in Riverside County that provides coverage and incidental take authorization for the Quino checkerspot butterfly; (3) the inclusion of occurrence data collected during the 2001 adult butterfly flight season; (4) removal of areas not known to be essential; and 5) refinements to provide consistency with the final recovery plan for the Quino checkerspot butterfly.

The Lake Mathews MSHCP in Riverside County was included in proposed critical habitat for the Quino checkerspot butterfly because we believe the habitat is essential to the conservation of the butterfly. During the public comment period we received comments from the Metropolitan Water District of Southern California (MWD) concerning the inclusion of the Lake Mathews MSHCP in proposed critical habitat for the Quino checkerspot butterfly. They indicated that the butterfly was a covered species under the Lake Mathews MSHCP, and that it provided sufficient special management for the butterfly. Additionally, they indicated that there was conditional take authorization for Quino checkerspot butterflies. We subsequently reviewed the Lake Mathews MSHCP and its Implementation Agreement to determine whether the management afforded the butterfly through its provisions would be sufficient for consideration to be excluded from final critical habitat under section 4(b)(2) of the Act. We found that the Lake Mathews MSHCP: (1) Is an approved and legally operative HCP in which the Quino checkerspot butterfly is a covered species, (2) provides take authorization for the Quino checkerspot butterfly, and (3) provides special management considerations for, and protections of, Quino checkerspot butterfly habitat. Consequently, we believe that the Lake Mathews MSHCP meets the criteria for exclusion under section 4(b)(2) of the Act. It has, therefore, been excluded from the final designation of critical habitat for the Quino checkerspot butterfly.

The proposed critical habitat was published in February of 2001, prior to the start of the 2001 adult butterfly flight season. It was our intent to use the data collected during the 2001 flight season to develop the final critical habitat rule, so that the final designation was based on the best available scientific and commercial data. In fact, many of the comments we received from the public suggested that we take into consideration the 2001 data prior to

finalizing the rule. Therefore, we used the data from the 2001 flight season in developing our final designation of critical habitat for the Quino checkerspot butterfly.

The data from the 2001 flight season, for the most part, corroborated decisions made during the development of the proposed critical habitat and provided additional information concerning the known occupancy of areas we believed to be essential to the conservation of the butterfly. Four new occurrence complexes were documented in Riverside County and seven in San Diego County. These new complexes occur primarily within the boundaries of areas we proposed as critical habitat. The locations of three new occurrence complexes are completely outside of our proposed critical habitat boundaries. We do not currently have sufficient information to determine if two of these complexes are essential to the conservation of the Quino checkerspot butterfly. However, one of the new occurrence complexes is believed to be essential to the conservation of the Quino checkerspot butterfly. This complex (the Dulzura Occurrence Complex) is located adjacent to the Otay Mesa Unit in a BLM designated wilderness area (please refer to the unit descriptions in the Critical Habitat section of this rule for a discussion of why this complex was not designated as critical habitat). As a result of the information pertaining to the new occurrence complexes, portions of Units 2 and 3, which were not previously known to be occupied by the Quino checkerspot butterfly, are now considered to be occupied.

Additionally, based on the 2001 adult flight season data, public comments, and updated aerial photography, we reassessed the lands that we determined to be essential to the conservation of the butterfly during the development of the final designation. Based on this reevaluation, we made some significant changes to Units 1, 2, and 4 which resulted in a reduction of 52,374 ha (129,405 ac) of land being designated as critical habitat for the Quino checkerspot.

The primary changes to Unit 1 consisted of removing the Lake Mathews MSHCP (discussed above), reducing the habitat not known to be occupied to within the boundaries of the Estelle Mountain Reserve, and refining the Harford Springs subunit to exclude areas not known to be essential to the conservation of the butterfly. This resulted in a reduction of approximately 7,212 ha (17,830 ac) from Unit 1.

The primary changes to Unit 2 consisted of: (1) Removing additional lands not known to be essential (*e.g.,* urban and agricultural lands); (2) removing portions of the Assessment District 161 HCP, that were mistakenly included in the proposed designation; and (3) implementing the revised methodology based on the 1 km (0.6 mi) dispersal distance. This resulted in a reduction of critical habitat in the following areas: (1) West of Oak Mountain and Vail Lake, in the vicinity of Pauba Valley; (2) on the Cahuilla Indian Reservation; (3) northeast and southeast of the town of Oak Grove in San Diego County; and (4) south of the town of Hemet, southwest of Diamond Valley Reservoir, and northwest of the town of Anza (*i.e.,* roughly between the towns of Sage and Hemet in Riverside County). These changes resulted in a reduction of approximately 35,457 ha (87,610 ac) lands being designated as critical habitat in Unit 2 from those that were proposed.

The primary changes that occurred to Unit 3 were: (1) Removing Otay Lake, which was mistakenly included in the proposed designation; (2) removing nonessential lands on Otay Mountain, primarily Tecate cypress woodland; (3) removing lands not known to be essential northwest of the town of Tecate; and (4) implementing the revised methodology based on the 1 km (0.6 mi) dispersal distance. This resulted in a reduction approximately 3,253 ha (8,040 ac).

The primary change to Unit 4 consists of removing lands not known to be essential north of Interstate 8 and east of the town of Jacumba, including associated active agricultural fields. This resulted in a reduction of 6,447 ha (15,930 ac) from this unit.

Further, because the final recovery plan for the Quino checkerspot butterfly was drafted concurrently with the final designation of critical habitat, we wanted to ensure recommendations for the conservation of the Quino checkerspot butterfly were consistent. Based on the 2001 data, the habitat complexes were redefined and renamed occurrence complexes, and new biological information was acquired about host and nectar plants. We believed that it was important to capture this new information consistently in both documents. Therefore, the background section and unit descriptions in this rule have been updated to reflect the new information and are now consistent with the final recovery plan being developed.

Additionally, based on the refinements to designated critical habitat discussed above, the amount of land in the designation that is currently not known to be occupied has been reduced from approximately 18,416 ha (45,510 ac) to an estimated 2,450 ha (6,050 ac). As a result, 96.5 percent of the designation is currently known to be occupied by the Quino checkerspot butterfly. The approximately 3.5 percent of the designation that is not currently known to be occupied is located with the Lake Mathews/Estelle Mountain Reserve in the Lake Mathews/Estelle Mountain Reserve subunit of Unit 1 in western Riverside County.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made publicly available for review on June 20, 2001 (66 FR 33046). We accepted comments on the draft analysis until July 30, 2001. Additionally, we held two public hearings on the proposed designation and the draft economic analysis on July 17, 2001, in Escondido, California.

Our draft economic analysis evaluated the potential future effects associated with the listing of the Quino checkerspot butterfly as an endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without critical habitat'' baseline and compared it to a ''with critical habitat'' scenario. The ''without critical habitat'' baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with

the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits.

The majority of consultations resulting from the critical habitat designation for the Quino checkerspot butterfly are likely to address land development, road construction, or road expansion activities. The draft analysis estimated that over a 10-year period, the critical habitat designation would result in approximately 10 additional biological surveys, 21 to 40 additional formal consultations, and 3 re-initiations of consultations that were previously initiated due to the presence of the butterfly. In addition, it was estimated that we would provide technical assistance for 180 inquiries regarding uncertainty about the presence or extent of critical habitat. Furthermore, many consultations would likely result in recommendations for project modifications. Based on our draft analysis, we concluded that the designation of critical habitat would not result in a significant economic impact and estimated that the potential economic effects over a 10-year period would range from $3.5 to $14.1 million.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis. The potential economic effects of the designation were reevaluated. Based on this new analysis, it was determined that there would be potential for additional consultations and assistance over and above the estimates projected in the draft analysis. Subsequently, the addendum concluded that the designation may result in potential economic effects ranging from between $5.4 and $19.9 million over a 10-year period. Because these values were believed to be relatively insignificant over the projected time period, the addendum concluded that no significant economic impacts were anticipated from the designation of critical habitat for the Quino checkerspot butterfly. Additionally, these values may overestimate the potential economic effects of the designation because a number of areas that were not considered to be occupied in the proposed designation, and therefore the economic analysis, are now known to be occupied based on data from the 2001 adult butterfly flight season. Further, the final designation has been reduced to encompass 69,440 ha (171,605 ac) versus the 124,814 ha (301,010 ac) proposed as critical habitat, a difference of approximately 52,374 ha (129,405 ac). Consequently, future consultations occurring in these areas would be due to the presence of the butterfly and not be solely attributable to the designation of critical habitat.

A more detailed discussion of our analyses is contained in the Draft Economic Analysis of Proposed Critical Habitat Designation for the Quino Checkerspot Butterfly (June 2001) and the Addendum to Economic Analysis of Critical Habitat Designation for the Quino Checkerspot Butterfly (January 2002). Both documents are included in the supporting documentation for this rulemaking and available for inspection at the Carlsbad Fish and Wildlife Office (refer to **ADDRESSES** Section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Quino checkerspot butterfly was listed as an endangered species in 1997. In fiscal years 1997 through 2001, we have conducted, or are in the process of conducting, an estimated 11 formal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of the Quino checkerspot butterfly. We have also issued section 10(a)(1)(B) incidental take permits for approximately 12 projects in areas where the species occurs, in which the project proponents have prepared either individual HCPs or were signatories to the AD161 HCP in western Riverside County.

Under the Act, Federal agencies shall consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded, authorized, or permitted by a Federal agency. Based upon our experience with this species, we conclude that any Federal action that is likely to result in the destruction or adverse modification of critical habitat would also be considered likely to jeopardize the continued existence of this species in areas occupied by the species. Accordingly, the designation of occupied areas as critical habitat for the Quino checkerspot butterfly is not anticipated to have any incremental impacts on actions that may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons that do not have a Federal involvement in their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species). The designation of areas as critical habitat, where section 7 consultations would not have occurred but for the critical habitat designation, may have impacts on actions that may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the listing of the species. These impacts were evaluated in our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

b. This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of the Quino checkerspot butterfly since its listing under the Act in 1997. In our economic analysis (see Economic Analysis section of this rule), we have evaluated the impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation. The designation of critical habitat is not expected to impose any additional restrictions beyond those that currently exist on currently occupied lands and will not create inconsistencies with other agencies' actions on unoccupied lands. Specifically, land management activities in areas not currently known to be occupied, such as the Lake Mathews/Estelle Mountain Reserve in the Lake Mathews/Estelle Mountain Reserve subunit of Unit 1, are expected to benefit the Quino checkerspot butterfly and other listed species in the long term; therefore, those actions should not be significantly affected by this designation.

c. This rule is not expected to materially affect entitlements, grants, user fees, loan programs, or the rights

and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification analysis (resulting from critical habitat designation) will have any significant incremental effects.

d. OMB has determined that this rule may raise novel legal or policy issues. Therefore, this rule is significant under E.O. 12866, and, as a result, has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. In this rule, we are certifying that the critical habitat designation for the Quino checkerspot butterfly will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, water storage and transfer, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement, and so will not be affected by critical habitat designation. In areas where the species may be present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Quino checkerspot butterfly. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in additional economic impacts to small entities due to the requirement to reinitiate consultation for ongoing Federal activities, or due to consultations being triggered in critical habitat where the species is currently not known to occur.

Since the Quino checkerspot butterfly was listed in January 1997, we have conducted only 11 formal consultations. The analysis provided in the Addendum to Economic Analysis of Critical Habitat Designation for the Quino Checkerspot Butterfly (January 2002) indicates that the potential number of small entities affected is approximately 1 percent. These consultations were for the construction of State Route 125 in San Diego County and for the construction of new housing developments and road expansions/improvements in Riverside County (California Department of Transportation and large development corporations) and related to HCPs done in both areas. The designation of critical habitat for the Quino checkerspot butterfly may result in the reinitiation of these consultations. However, as stated above, these consultations do not affect a substantial number of small entities. Furthermore, because the consultations already addressed the presence of the Quino checkerspot butterfly and the effects of the actions on the continued existence of the species, (*i.e.,* jeopardy), we believe that the designation of critical habitat would not result in significant additional regulatory or economic burdens on these entities.

In areas where the species is currently not known to occur, designation of critical habitat could trigger additional review of federally funded, authorized, or permitted activities under section 7 of the Act. The area of the designation that is not known to be occupied is located in Lake Mathews/Estelle Mountain Reserve subunit of Unit 1. This subunit encompasses approximately 2,450 ha (6,050 ac) of land and is located within the Lake Mathews/Estelle Mountain Reserve established for the Stephens' kangaroo rat. We do not anticipate any federal actions to occur on this reserve at this time.

Current activities with Federal involvement that may require consultation include: Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act; regulation of water flows, damming, diversion, and channelization by any Federal agency; regulation of grazing, mining, and recreation by the BLM, Forest Service, or the Service; road construction, maintenance, and right of way designation; regulation of agricultural activities; regulation of airport improvement activities by the Federal Aviation Administration; construction of roads and fences along the international border with Mexico and associated immigration enforcement activities by the Immigration and Naturalization Service; hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; construction of communication sites licensed by the Federal Communications Commission; and activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency. Many of the activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contracts, grants, permits, or other Federal authorizations. Based on past consultation history, anticipated future consultations would not involve a substantial number of small entities. Therefore, the designation of critical

habitat is not anticipated to have any significant additional effects on these activities.

In the economic analysis for the proposed rule, we found that the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for the Quino checkerspot butterfly to range between $5.4 to $19.9 million dollars over a 10-year period. This figure includes the total costs associated with heavy construction (*i.e.,* highway construction), estimated to range between $0.6 and $1.4 million, and the total costs associated with commercial and residential real estate development, estimated to range between $0.8 and $8.2 million dollars.

In determining whether this rule could ''significantly affect a substantial number of small entities,'' the economic analysis first determined whether critical habitat could potentially affect a ''substantial number'' of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. Residential development on private land constitutes the primary activity expected to be impacted by the designation of critical habitat for the Quino checkerspot butterfly.

To be conservative (*i.e.*, more likely overstate impacts than understate them), the economic analysis assumed that all potentially affected parties that may be engaged in development activities within critical habitat are small entities. There are approximately 715 residential development and construction companies in San Diego and Riverside Counties that are small businesses. Of these, approximately nine may potentially be affected by the designation of critical habitat for the Quino checkerspot butterfly, according to the Addendum to Economic Analysis of Critical Habitat Designation for the Quino Checkerspot Butterfly (January 2002). Therefore, approximately 1 percent of residential development and construction companies in San Diego and Riverside Counties may be affected by the designation of critical habitat for the Quino checkerspot butterfly. Because 1 percent is far less than the 20 percent threshold that would be considered ''substantial,'' this analysis concludes that this designation will not affect a substantial number of small entities in the residential development and construction industries as a result of the designation of critical habitat for the Quino checkerspot butterfly. The analysis also estimated that less than 0.2 percent of the small businesses in the highway construction industry could be affected.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude in a biological opinion that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we will make every effort to offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or destroying or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption was obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing a reasonable and prudent alternative. Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a limited consultation history for the Quino checkerspot butterfly, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer could modify a project or take measures to protect the Quino checkerspot butterfly. Based on the types of modifications and measures that have been implemented in the past for this species, a developer may take such steps as re-aligning the project to avoid sensitive areas, sponsoring a captive breeding program, having a biological monitor present during the construction phase, and performing pre-construction surveys. The total estimated cost for implementing these measures is estimated to range between $3.9 and $38.1 million dollars over a 10-year period within critical habitat. However, it is estimated that the majority of these costs would occur regardless of the critical habitat designation. It should also be noted that developers likely would already be required to undertake such measures due to regulations in CEQA. These measures are not likely to result in a significant economic impact to project proponents. The rule itself, as proposed, is estimated to result in total costs between $0.8 and $8.2 million to this industry (this figure includes the additional costs of participating in section 7 consultations).

The cost per-business, for real estate development activities that will likely require a consultation with the Service, was estimated to average $360,622 per project. Given that approximately nine small businesses, at the most, could bear these costs each year (in estimating effects to small businesses, the analysis conservatively assumes that all potentially affected businesses are small), only about 1 percent of the total number of small real estate development businesses in the area would incur costs considered significant. Furthermore, given that the analysis assumes that the size of such projects would range between 75 and 100 ac, the average cost per project associated with section 7 represents a small percentage, overall, on the total worth of the project.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation, and that analysis was made available for public review and comment before finalization of this designation. Based on estimates

provided in the economic analysis, the potential economic impact of critical habitat designation for the Quino checkerspot butterfly over the next 10 years is estimated to range between $5.4 and $19.9 million. Assuming that these costs are spread out evenly over the period of study, the average annual cost of the designation, as proposed ranges between $0.5 and $2.0 million. Furthermore, due to the changes made in the final rule regarding the designation of private lands (a reduction of approximately 46,540 ha (115,010 ac from the proposal), the actual impact of critical habitat designation on private landowners will be less than that estimated in the economic analysis.

In summary, we have considered whether this rule would result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for the Quino checkerspot butterfly will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because, as explained in our economic analysis, the designation is anticipated to have a total estimated economic effect ranging between $5.4 and $19.9 million over a 10-year period. Additionally, these values may be an overestimate of the potential economic effects of the designation because approximately 18,416 ha (45,510 ac) of land not known to be occupied in the proposed designation, and considered not occupied in the economic analysis, are now known to be occupied based on data from the 2001 adult butterfly flight season (only 2,450 ha (6,050 ac) are not known to be occupied in this final designation); and, (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by this action and will not be affected by the final rule designating critical habitat for this species. This final rule will not place additional burdens on any entity. We anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. In addition, we anticipate that the designation will not have any adverse effects on activities in areas not known to be occupied due to the presence of other federally listed species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.:

a. This rule, as designated, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further significant restrictions are anticipated in areas of occupied designated critical habitat.

b. This rule, as designated, will not produce a Federal mandate of $100 million or greater in any year. That is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 69,440 ha (171,605 ac) of lands in Riverside and San Diego Counties, California as critical habitat for the Quino checkerspot butterfly in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. The designation of critical habitat within the geographic range occupied by the Quino checkerspot butterfly imposes no significant additional restrictions to those currently in place, and therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Quino checkerspot butterfly.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement, as defined by the National

Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This critical habitat designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we are coordinating with federally recognized Tribes on a Government-to-Government basis. Further, Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to the conservation of a listed species. The Secretarial Order further states that in designating critical habitat, ''the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.''

In our proposed critical habitat rule, we indicated that approximately 4,405 ha (10,890 ac) of lands within the Cahuilla Band of Mission Indians' Reservation in western Riverside County were essential for the conservation of the Quino checkerspot butterfly. This determination was based on the close proximity of two butterfly occurrence complexes—the Silverado and Southwest Cahuilla complexes—and the continuity of butterfly habitat adjacent to and along the southern portion of the Reservation. We are committed to developing a positive working relationship with the Tribe and will continue our attempts to work with them on developing conservation measures for the butterfly. However, due to time constraints for completing this final rule, we were required to finalize the designation based on our own analysis of the relative importance of the lands within the Cahuilla Band of Mission Indians' Reservation for the conservation of the Quino checkerspot butterfly.

Additional information about the distribution of the species on or near the Reservation became available following the publication of the critical habitat proposal. During the 2001 Quino adult flight season, an additional population of Quino checkerspot butterflies was identified in close proximity to the southern boundary of the Reservation. This occurrence complex has been labeled the Tule Peak complex. Consequently, based on data from the 1998 through the 2001 flight seasons, there are an estimated 226 butterfly occurrences grouped into three occurrence complexes adjacent to and overlapping the southern boundary of the Reservation. These complexes include the majority of documented Quino checkerspot butterflies in the eastern portion of western Riverside County and constitute one or more significant and substantial essential core regional populations of the species.

Because these occurrence complexes overlap lands within the Reservation, and due to the apparent continuity of butterfly habitat from the complexes across much of the Reservation, we have determined that lands on the Reservation defined by the occurrence complexes that support the primary constituent elements for the Quino checkerspot butterfly are essential to the conservation of this species and are therefore designated as critical habitat. Based on the distribution and dispersal of the Quino checkerspot butterfly and our analysis of areas essential for the conservation of this species, we have reduced the area designated as critical habitat to 525 ha (1,300 ac) on the Cahuilla Band of Mission Indian's Reservation.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Relationship to Mexico

Although this species occurs in Mexico, as well as the United States, according to CFR 402.12(h), ''Critical habitat shall not be designated with foreign countries or in other areas outside of the United States' jurisdiction.'' Therefore, Mexico will not be affected by this designation.

References Cited

A complete list of all references cited in this designation is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this designation are Douglas Krofta and Alison Anderson of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Butterfly, Quino checkerspot''' under ''INSECTS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Verebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							

Species		Historic range	Verebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Butterfly, Quino checkerspot.	*Euphydryas edith quino*.	U.S.A. (CA), Mexico.	Entire	E	604	17.95(i)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(i) by adding critical habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*). in the same alphabetical order as this subspecies occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.* * * *

Quino Checkerspot Butterfly (*Euphydryas editha quino*).

(1) Critical habitat units are depicted for Riverside and San Diego Counties, California, on the maps below.

(2) Primary constituent elements occur in undeveloped areas that support various types of open-canopy woody and herbaceous plant communities. They include, but are not limited to, plant communities that provide populations of host plant and nectar sources for the Quino checkerspot butterfly. The primary constituent elements for the Quino checkerspot butterfly consist of:

(i) Grassland and open-canopy woody plant communities, such as coastal sage scrub, open red shank chaparral, and open juniper woodland, with host plants or nectar plants;

(ii) Undeveloped areas containing grassland or open-canopy woody plant communities, within and between habitat patches, utilized for Quino checkerspot butterfly mating, basking, and movement; or

(iii) Prominent topographic features, such as hills and/or ridges, with an open woody or herbaceous canopy at the top. Prominence should be determined relative to other local topographic features.

(3) Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for which the Quino checkerspot butterfly is a covered species and has take authorization, issued under section 10(a)(1)(B) of the Act on or before April 15, 2002.

(4) Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, paved or improved roads, aqueducts, railroads, airports, other paved areas, lawns, large areas of closed canopy woody vegetation such as chaparral and cypress, active agricultural fields, and other urban landscaped areas are not and do not contain constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(5) Critical Habitat Map Units—Index Map follows:

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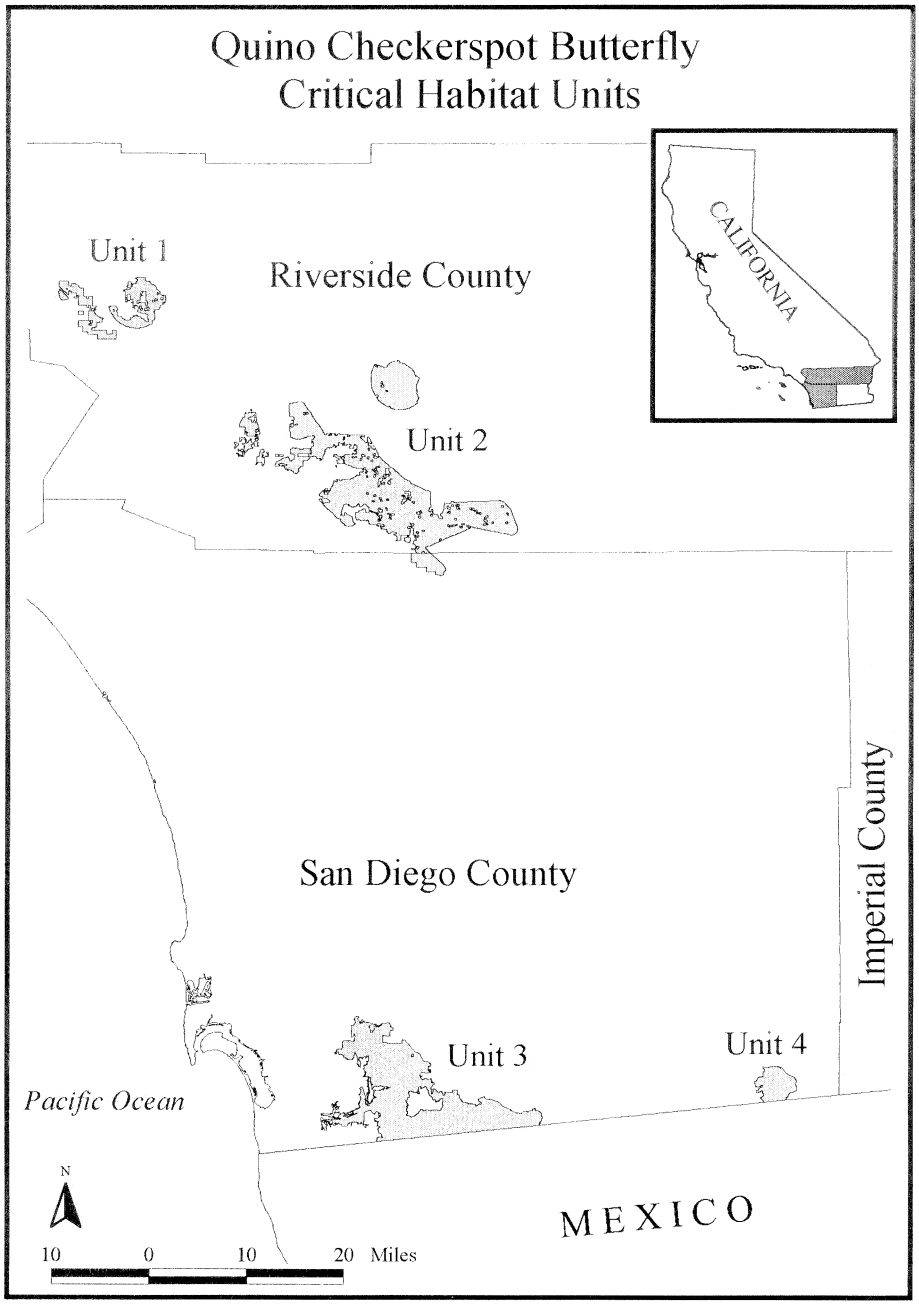

BILLING CODE 4310–55–C

(6) Map Unit 1: Lake Mathews, Riverside County, California.

(i) Lake Mathews/Estelle Mountain Reserve Subunit. From 1:24,000 USGS quadrangle maps Alberhill and Lake Mathews, California, lands bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 461000, 3738300; 461000, 3738100; 461100, 3738100; 461100, 3737900; 461200, 3737900; 461200, 3737700; 461300, 3737700; 461300, 3737500; 461500, 3737500; 461500, 3737400; 461600, 3737400; 461600, 3737200; 462000, 3737200; 462000, 3737100; 462100, 3737100; 462100, 3737000; 462300, 3737000; 462300, 3737100; 462400, 3737100; 462400, 3737000; 462600, 3737000; 462600, 3736900; 462500, 3736900; 462500, 3736800; 462300, 3736800; 462300, 3736600; 462400, 3736600; 462400, 3736300; 461500, 3736300; 461500, 3735500; 461200, 3735500; 461200, 3735300; 461100, 3735300; 461100, 3735400; 460800, 3735400; 460800, 3735300; 460700, 3735300; 460700, 3735000; 463100, 3735000; 463100, 3734400; 464000, 3734400; 464000, 3735000; 464700, 3735000; 464700, 3733500; 461600, 3733500; 461600, 3734300; 460000, 3734300; 460000, 3734700; 459200, 3734700; 459200, 3735500; 458400, 3735500; 458400, 3736600; 460100, 3736600; 460100, 3738200; 460300, 3738200; 460300, 3738700; 460400, 3738700; 460400, 3739100; 460100, 3739100; 460100, 3738700; 459800, 3738700; 459800, 3739100; 458400, 3739100; 458400, 3740500; 458500, 3740500; 458500, 3740700; 458200, 3740700; 458200, 3740300; 457700, 3740300; 457700, 3740600; 458100, 3740600; 458100, 3741100; 457300, 3741100; 457300, 3741500; 457000, 3741500; 457000, 3741600; 456800, 3741600; 456800, 3740800; 456700, 3740800; 456700, 3740900; 456600, 3740900; 456600, 3741000; 456500, 3741000; 456500, 3741100; 456400, 3741100; 456400, 3741200; 456300, 3741200; 456300, 3741300; 456200, 3741300; 456200, 3741400; 456100, 3741400; 456100, 3741500; 456000, 3741500; 456000, 3741600; 455900, 3741600; 455900, 3741700; 455800, 3741700; 455800, 3741800; 455700, 3741800; 455700, 3741900; 455600, 3741900; 455600, 3742000; 455500, 3742000; 455500, 3742100; 455400, 3742100; 455400, 3742200; 455300, 3742200; 455300, 3743100; 456800, 3743100; 456800, 3742300; 457300, 3742300; 457300, 3742700; 458000, 3742700; 458000, 3742500; 458400, 3742500; 458400, 3742200; 458600, 3742200; 458600, 3742000; 459300, 3742000;

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(ii) Harford Springs Subunit. From 1:24,000 USGS quadrangle maps Steele Peak and Lake Mathews, California, lands bounded by the following UTM NAD27 coordinates (E, N): 468200, 3743800; 469400, 3743800; 469400, 3743200; 469500, 3743200; 469500, 3743100; 469700, 3743100; 469700, 3743000; 470000, 3743000; 470000, 3743100; 470100, 3743100; 470100, 3743000; 470300, 3743000; 470300, 3742800; 470400, 3742800; 470400, 3742600; 470700, 3742600; 470700, 3742500; 470900, 3742500; 470900, 3742400; 471000, 3742400; 471000, 3742300; 471100, 3742300; 471100, 3742200; 471200, 3742200; 471200, 3741800; 471400, 3741800; 471400, 3741700; 471600, 3741700; 471600, 3741600; 471700, 3741600; 471700, 3741500; 471800, 3741500; 471800, 3741400; 471900, 3741400; 471900, 3740900; 472100, 3740900; 472100, 3740800; 472200, 3740800; 472200, 3740700; 472400, 3740700; 472400, 3740800; 472700, 3740800; 472700, 3740500; 472800, 3740500; 472800, 3739600; 472700, 3739600; 472700, 3739500; 472600, 3739500; 472600, 3739600; 472500, 3739600; 472500, 3739500; 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467800, 3738400; 467700, 3738400; 467700, 3738600; 467600, 3738600; 467600, 3738700; excluding land bounded by 468800, 3741500; 468800, 3741400; 468900, 3741400; 468900, 3741300; 469000, 3741300; 469000, 3741100; 468600, 3741100; 468600, 3740900; 468800, 3740900; 468800, 3740800; 469000, 3740800; 469000, 3740700; 468700, 3740700; 468700, 3740500; 468600, 3740500; 468600, 3739900; 468100, 3739900; 468100, 3739400; 468400, 3739400; 468400, 3739600; 468500, 3739600; 468500, 3739500; 468700, 3739500; 468700, 3739600; 469400, 3739600; 469400, 3739100; 469500, 3739100; 469500, 3739000; 469800, 3739000; 469800, 3739300; 469900, 3739300; 469900, 3739500; 469800, 3739500; 469800, 3739900; 469500, 3739900; 469500, 3741500; 468800, 3741500; land bounded by 471400, 3741200; 471400, 3741100; 471300, 3741100; 471300, 3740900; 471700, 3740900; 471700, 3741100; 471600, 3741100; 471600, 3741200; 471400, 3741200; land bounded by 472000, 3740400; 472000, 3740100; 472200, 3740100; 472200, 3740000; 472300, 3740000; 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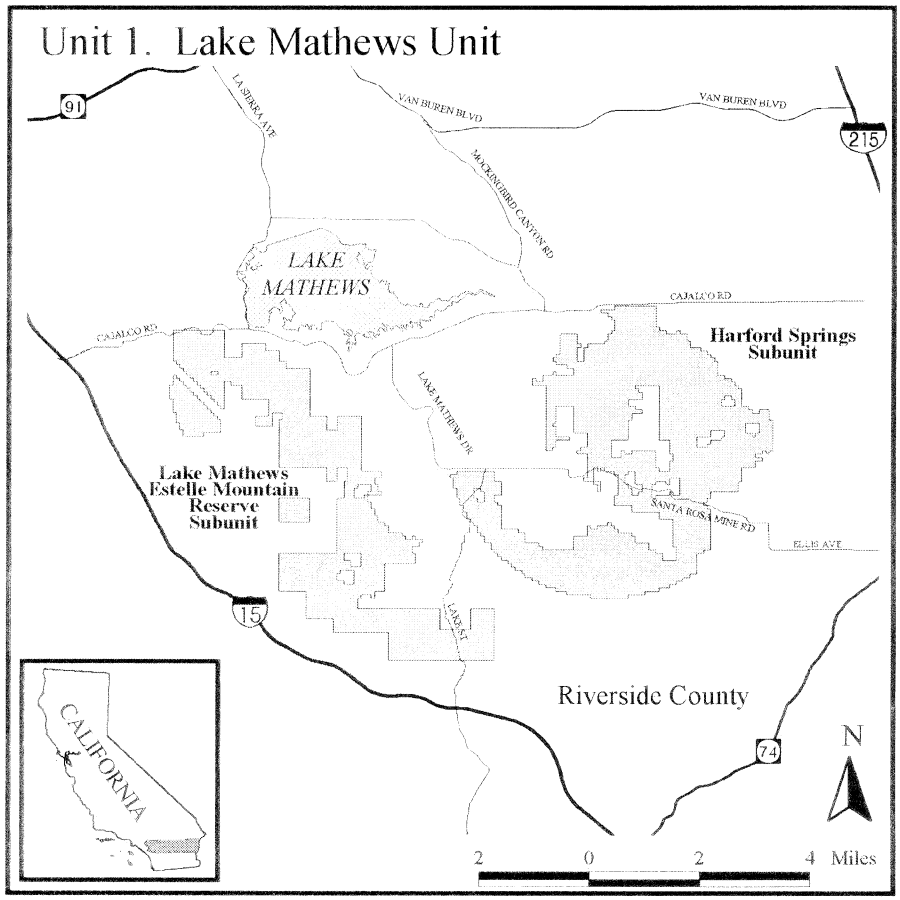
464300, 3738400; 464300, 3738500; 464100, 3738500.

(iii) Map Unit 1 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 2: Southwest Riverside County, California.

(i) From USGS 1:24,000 quadrangle maps Romoland, Winchester, Hemet, Blackburn Canyon, Murrieta, Bachelor Mountain, Sage, Cahuilla Mountain, Anza, Pechanga, Vail Lake, Aguanga, and Beauty Mountain, California.

(ii) Brown Canyon Subunit: In the vicinity of Hemet and Brown Canyon, land bounded by the following UTM NAD27 coordinates (E, N): 511000, 3730000; 511100, 3730000; 511100, 3729900; 511300, 3729900; 511300, 3729800; 511400, 3729800; 511400, 3729700; 511500, 3729700; 511500, 3729600; 511900, 3729600; 511900, 3729500; 512200, 3729500; 512200, 3729400; 512400, 3729400; 512400, 3729300; 512500, 3729300; 512500, 3729200; 512600, 3729200; 512600, 3729100; 512800, 3729100; 512800, 3729000; 512900, 3729000; 512900, 3728900; 513100, 3728900; 513100, 3728800; 513200, 3728800; 513200, 3728700; 513400, 3728700; 513400, 3728600; 513500, 3728600; 513500, 3728400; 513600, 3728400; 513600, 3728300; 513700, 3728300; 513700, 3728200; 513800, 3728200; 513800, 3728000; 513900, 3728000; 513900, 3727600; 514000, 3727600; 514000, 3727400; 514100, 3727400; 514100, 3727500; 514200, 3727500; 514200, 3727400; 514300, 3727400; 514300, 3727300; 514500, 3727300; 514500, 3727200; 514600, 3727200; 514600, 3726800; 514500, 3726800; 514500, 3726500; 514400, 3726500; 514400, 3726300; 514300, 3726300; 514300, 3726100; 514200, 3726100; 514200, 3725300; 514300, 3725300; 514300, 3725100; 514200, 3725100; 514200, 3724900; 514300, 3724900; 514300, 3724600; 514200, 3724600; 514200, 3724400; 514300, 3724400; 514300, 3724300; 514400, 3724300; 514400, 3724000; 514500, 3724000; 514500, 3723900; 514600, 3723900; 514600, 3723800; 514500, 3723800; 514500, 3723600; 514400, 3723600; 514400, 3723400; 514300, 3723400; 514300, 3723300; 514200, 3723300; 514200, 3723100; 514300, 3723100; 514300, 3722800; 514100, 3722800; 514100, 3722700; 514000, 3722700; 514000, 3722600; 513800, 3722600; 513800, 3722500; 513700, 3722500; 513700, 3722400; 513400, 3722400; 513400, 3722300; 513200, 3722300; 513200, 3722200; 513000, 3722200; 513000, 3722100; 512600, 3722100; 512600, 3722000; 512300, 3722000; 512300, 3721900; 510500, 3721900; 510500, 3722000; 510200, 3722000; 510200, 3722100; 509900, 3722100; 509900, 3722400; 509800, 3722400; 509800, 3722500; 509600, 3722500; 509600, 3722300; 509400, 3722300; 509400, 3722400; 509200, 3722400; 509200, 3722500; 509000, 3722500; 509000, 3722600; 508900, 3722600; 508900, 3722700; 508700, 3722700; 508700, 3722800; 508600, 3722800; 508600, 3722900; 508400, 3722900; 508400, 3723000; 508300, 3723000; 508300, 3723100; 508200, 3723100; 508200, 3723200; 508100, 3723200; 508100, 3723300; 508000, 3723300; 508000, 3723400; 507900, 3723400; 507900, 3723500; 507800, 3723500; 507800, 3723600; 507700, 3723600; 507700, 3723800; 507600, 3723800; 507600, 3723900; 507500, 3723900; 507500, 3724000; 507800, 3724000; 507800, 3724300; 507400, 3724300; 507400, 3724200; 507300, 3724200; 507300, 3724400; 507200, 3724400; 507200, 3724600; 507100, 3724600; 507100, 3724800; 507000, 3724800; 507000, 3725000; 506900, 3725000; 506900, 3725400; 506800, 3725400; 506800, 3726000; 506700, 3726000; 506700, 3728000; 506800, 3728000; 506800, 3728300; 506900, 3728300; 506900, 3728700; 507000, 3728700; 507000, 3729000; 507100, 3729000; 507100, 3729200; 507200, 3729200; 507200, 3729400; 507500, 3729400; 507500, 3729300; 507300, 3729300; 507300, 3729100; 507400, 3729100; 507400, 3729000; 507600, 3729000; 507600, 3728900; 507700, 3728900; 507700, 3729200; 507800, 3729200; 507800, 3729300; 507900, 3729300; 507900, 3729200; 508100, 3729200; 508100, 3729100; 508500, 3729100; 508500, 3729000; 508700, 3729000; 508700, 3728900; 509200, 3728900; 509200, 3729000; 509300, 3729000; 509300, 3729200; 509400, 3729200; 509400, 3729300; 509500, 3729300; 509500, 3729400; 509600, 3729400; 509600, 3729500; 509800, 3729500; 509800, 3729600; 510000, 3729600; 510000, 3729700; 510100, 3729700; 510100, 3729800; 510400, 3729800; 510400, 3729900; 511000, 3729900; returning to 511000, 3730000; and

(iii) Temecula/Murrieta/Oak Grove Subunit: Land bounded by 507500, 3729300; 507600, 3729300; 507600, 3729200; 507500, 3729200; 507500, 3729300; excluding land bounded by 508400, 3726500; 508400, 3726400; 508300, 3726400; 508300, 3726200; 508600, 3726200; 508600, 3726500; 508400, 3726500; land bounded by 508500, 3726000; 508500, 3725900; 508300, 3725900; 508300, 3725700; 508400, 3725700; 508400, 3725600;

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In the vicinity of Lake Skinner, Wilson Valley, and Oak Grove, land bounded by the following UTM NAD27 coordinates (E, N): 513500, 3702800; 513200, 3702800; 513200, 3702700; 513000, 3702700; 513000, 3702800; 512900, 3702800; 512900, 3702700; 512700, 3702700; 512700, 3702500; 512800, 3702500; 512800, 3702400; 513000, 3702400; 513000, 3702500; 513100, 3702500; 513100, 3702400; 513300, 3702400; 513300, 3702200; 513200, 3702200; 513200, 3702100; 513100, 3702100; 513100, 3702000; 513200, 3702000; 513200, 3701800; 513100, 3701800; 513100, 3701300; 511700, 3701300; 511700, 3700500; 511000, 3700500; 511000, 3701100; 510900, 3701100; 510900, 3701200; 510800, 3701200; 510800, 3701300; 510700, 3701300; 510700, 3701400; 510500, 3701400; 510500, 3701600; 510900, 3701600; 510900, 3701800; 510700, 3701800; 510700, 3701900; 510100, 3701900; 510100, 3701800; 510000, 3701800; 510000, 3701700; 509700, 3701700; 509700, 3701600; 509600, 3701600; 509600, 3701700; 509500, 3701700; 509500, 3701800; 509400, 3701800; 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In the vicinity of Murrieta, lands bounded by the following UTM NAD27 coordinates (E, N): 486700, 3722000; 487000, 3722000; 487000, 3721700; 486900, 3721700; 486900, 3721800; 486800, 3721800; 486800, 3721900; 486700, 3721900; 486700, 3722000; land bounded by 484200, 3716600; 484300, 3716600; 484300, 3716500; 484500, 3716500; 484500, 3716400; 484800, 3716400; 484800, 3715900; 484600, 3715900; 484600, 3715700; 484500, 3715700; 484500, 3715600; 484400, 3715600; 484400, 3715500; 484300, 3715500; 484300, 3715400; 484200, 3715400; 484200, 3715700; 484300, 3715700; 484300, 3716000; 484400, 3716000; 484400, 3716200; 484200, 3716200; 484200, 3716600; land bounded by 484500, 3714800; 484600, 3714800; 484600, 3714700; 484900, 3714700; 484900, 3714500; 484800, 3714500; 484800, 3714600; 484500, 3714600; 484500, 3714800; land bounded by 487900, 3717400; 488200, 3717400; 488200, 3717300; 488000, 3717300; 488000, 3717100; 488200, 3717100; 488200, 3717000; 488100, 3717000; 488100, 3716800; 487900, 3716800; 487900, 3716500; 488100, 3716500; 488100, 3716300; 488000, 3716300; 488000, 3715900; 488200, 3715900; 488200, 3715800; 487400, 3715800; 487400, 3716300; 487200, 3716300; 487200, 3716200; 487000, 3716200; 487000, 3716100; 486900, 3716100; 486900, 3715800; 487000, 3715800; 487000, 3715700; 487100, 3715700; 487100, 3715600; 487200, 3715600; 487200, 3715500; 487100, 3715500; 487100, 3715400; 486600, 3715400; 486600, 3715300; 486400, 3715300; 486400, 3715200; 486300, 3715200; 486300, 3715100; 486200, 3715100; 486200, 3714900; 485900, 3714900; 485900, 3714800; 485800, 3714800; 485800, 3714700; 485700, 3714700; 485700, 3714200; 485100, 3714200; 485100, 3714300; 484900, 3714300; 484900, 3714200; 484800, 3714200; 484800, 3714400; 484900, 3714400; 484900, 3714500; 485200, 3714500; 485200, 3714400; 485300, 3714400; 485300, 3714300; 485400, 3714300; 485400, 3714400; 485500, 3714400; 485500, 3714700; 485400, 3714700; 485400, 3714900; 485800, 3714900; 485800, 3715100; 485600, 3715100; 485600, 3715000; 485200, 3715000; 485200, 3715100; 484900, 3715100; 484900, 3715000; 484800, 3715000; 484800, 3715100; 484700, 3715100; 484700, 3715300; 484800, 3715300; 484800, 3715400; 484900, 3715400; 484900, 3715200; 485200, 3715200; 485200, 3715300; 485300, 3715300; 485300, 3715400; 485500, 3715400; 485500, 3715300; 485700, 3715300; 485700, 3715700; 485800, 3715700; 485800, 3715800; 485700, 3715800; 485700, 3716200; 485400, 3716200; 485400, 3716400; 485900, 3716400; 485900, 3717000; 485300,

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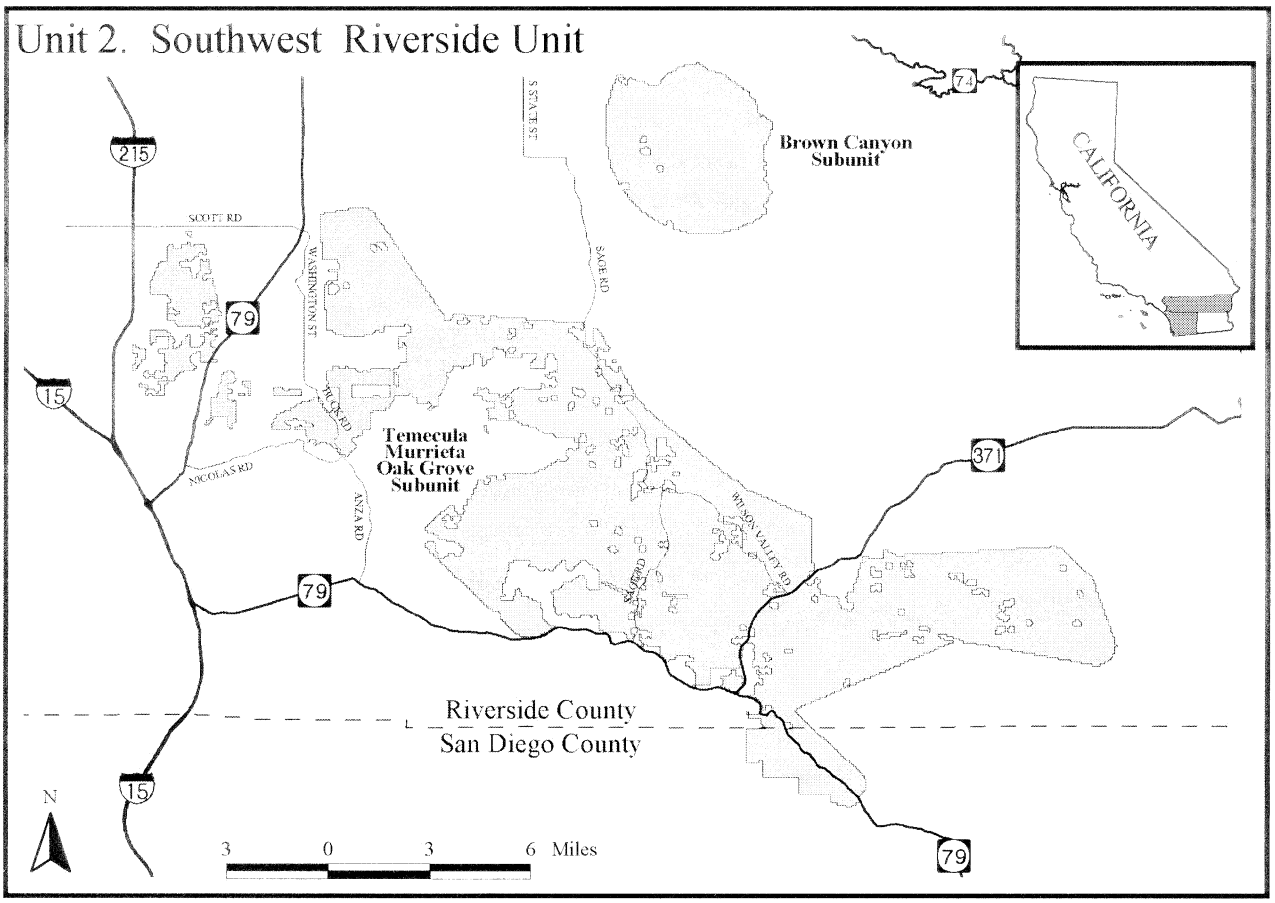
(iv) Map Unit 2 follows:



(8) Unit 3: Otay, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Dulzura, Jamul Mountains, Potrero, Tecate, Otay Mountain, Imperial Beach, and Otay Mesa. Beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 507800 thence north along the following UTM NAD27 coordinates (E, N): 507800, 3601600 ; 507900, 3601600; 507900, 3602100; 508100, 3602100; 508100, 3602200; 508700, 3602200; 508700, 3602400; 508600, 3602400; 508600, 3602700; 508200, 3602700; 508200, 3603200; 508100, 3603200; 508100, 3603400; 508000, 3603400; 508000, 3603600; 508100, 3603600; 508100, 3603700; 508200, 3603700; 508200, 3603800; 508400, 3603800; thence north to the County of San Diego Major Amendment (CSDMA) boundary at UTM x-coordinate 508400; thence northwest following the CSDMA boundary to UTM x-coordinate 508300; thence south and returning north following UTM coordinates 508300, 3604000; 507900, 3604000; 507900, 3604100; 508000, 3604100; 508000, 3604600; 508100, 3604600; 508100, 3604700; thence east to the CSDMA boundary at UTM y-coordinate 3604700; thence north along the CSDMA boundary to the Multiple Habitat Planning Area (MHPA) boundary; thence northwestward along the MHPA boundary to CSDMA boundary; thence around the CSDMA boundary to the MHPA boundary; thence northward along the MHPA boundary to UTM y-coordinate 3606500; thence west to UTM coordinates (E, N): 506700, 3606500; thence north to the City of Chula Vista Preserve Design (CCVPD) boundary at UTM x-coordinate 506700; thence southwestward along the CCVPD boundary to the MHPA, thence south to the CSDMA boundary; thence around the CSDMA boundary to the MHPA boundary; thence along the MHPA boundary to UTM y-coordinate 3604500; thence east following UTM coordinates 504600, 3604500; 504600, 3604600; 503700, 3604600; thence north to the MHPA boundary at UTM x-coordinate 503700; thence west along the MHPA boundary and continuing along Federal lands boundaries; thence west and north along the Federal lands boundaries to the MHPA boundary; thence westward along the MHPA boundary to Otay Mesa Road; thence west along Otay Mesa Road to the MHPA boundary; thence northward along the MHPA boundary to UTM x-coordinate 498900; thence south and following UTM coordinates 498900, 3603400; 498800, 3603400; 498800, 3603500; 498700, 3603500; 498700, 3603700; 498800, 3603700; thence south to the MHPA boundary at UTM x-coordinate 498800; thence northward along the MHPA boundary to UTM y-coordinate 3604200; thence east and following UTM coordinates 498600, 3604200; 498600, 3604700; 498500, 3604700; 498500, 3605400; 498700, 3605400; thence to the MHPA boundary at UTM x-coordinate 498700; thence east and back west along the CCVPD boundary to UTM x-coordinate 489700; thence south and following UTM coordinates 498700, 3605700; 498600, 3605700; 498600, 3606100; 498700, 3606100; thence south to the CCVPD boundary at UTM x-coordinate 498700; thence eastward along the CCVPD boundary to the MHPA boundary; thence northward along the MHPA boundary to UTM x-coordinate 506400; thence west and following UTM coordinates 506400, 3607900; 506300, 3607900; 506300, 3608100; thence east to the MHPA boundary at UTM y-coordinate 3608100; thence northward along the MHPA to UTM x-coordinate 505900; thence north along UTM x-coordinate 505900 to the CCVPD; thence north and east along the CCVPD boundary to UTM x-coordinate 506200; thence north to UTM coordinates (E,N) 506200, 3614200, thence east to the CCVPD boundary at UTM y-coordinate 3614200; thence north and east along the CCVPD boundary to the MHPA boundary; thence north along the MHPA boundary to UTM x-coordinate 503800; thence south and following UTM coordinates 503800, 3614900; 503000, 3614900; thence north to the SDNWR boundary at UTM x-coordinate 503000; thence around the SDNWR boundary to the MHPA boundary; thence southeastward along the MHPA boundary to the SDNWR boundary; thence northeastward and returning southwestward along the SDNWR boundary to the MHPA boundary; thence south along the MHPA boundary to the CSDMA boundary; thence south along the CSDMA boundary to the MHPA boundary; thence north along the MHPA boundary to UTM y-coordinate 3620200; thence west and following UTM coordinates 507300, 3620200; 507300, 3620300; thence east to the MHPA boundary at UTM y-coordinate 3620300; thence north along the MHPA boundary to Highway 94; thence east along Highway 94 to the MHPA boundary; thence southeastward along the MHPA boundary to the SDNWR boundary; thence north along the SDNWR boundary to Highway 94; thence east along Highway 94 to the SDNWR boundary; thence south the SDNWR boundary to UTM y-coordinate 3619400; thence east and following UTM coordinates 510000, 3619400; 510000, 3618800; 509900, 3618800; thence north to the MHPA boundary at UTM x-coordinate 509900; thence west along the MHPA boundary to UTM x-coordinate 509800; thence south and following UTM coordinates 509800, 3618800; 509400, 3618800; thence north to the MHPA boundary at UTM x-coordinate 509400; thence west along the MHPA boundary to UTM x-coordinate 508800; thence south and following UTM coordinates 508800, 3617800; 509500, 3617800; 509500, 3617700; 510200, 3617700; 510200, 3617600; 510300, 3617600; 510300, 3617700; thence east to California Department of Fish and Game (CDFG) lands at UTM y-coordinate 3617700; thence north and east along the CDFG lands to Highway 94; thence southeastward along Highway 94 to the MHPA boundary; thence west along the MHPA boundary to CDFG lands; thence south and west along the CDFG lands to the MHPA boundary; thence around the MHPA boundary to CDFG lands; thence along the CDFG lands to UTM x-coordinate 514900; thence south and following UTM coordinates 514900, 3612300; 515400, 3612300; 515400, 3612200; 515300, 3612200; 515300, 3612100; 515100, 3612100; 515100, 3612000; 515000, 3612000; 515000, 3611900; 515200, 3611900; 515200, 3611700; 515400, 3611700; 515400, 3611600; 515600, 3611600; 515600, 3611700; 515700, 3611700; 515700, 3611800; 516000, 3611800; 516000, 3611700; 516700, 3611700; 516700, 3611800; 516800, 3611800; 516800, 3611700; 516900, 3611700; 516900, 3611500; 517000, 3611500; 517000, 3611300; 516900, 3611300; 516900, 3611100; 517100, 3611100; 517100, 3611200; 517300, 3611200; 517300, 3611000; 517400, 3611000; 517400, 3610800; 517100, 3610800; 517100, 3610600; 517000, 3610600; 517000, 3610500; 516900, 3610500; 516900, 3610400; 516800, 3610400; 516800, 3610300; 516700, 3610300; 516700, 3610100; 516800, 3610100; 516800, 3609900; 516900, 3609900; 516900, 3609300; 517000, 3609300; 517000, 3609400; 517100, 3609400; 517100, 3609600; 517200, 3609600; 517200, 3609900; 517100, 3609900; 517100, 3610000; 517200, 3610000; 517200, 3610100; 517400, 3610100; 517400, 3610000; 517600, 3610000; 517600, 3609900; 517700, 3609900; 517700, 3609700; 517900, 3609700; 517900, 3609500; 518200, 3609500; 518200, 3609700; 518500, 3609700; 518500, 3609600; 518600, 3609600; 518600, 3609400; 518800, 3609400; 518800, 3609100; 519100, 3609100; 519100, 3609600; 519200, 3609600; thence south to the MHPA boundary at UTM x-coordinate 519200; thence east along the MHPA to UTM y-coordinate 3609600; thence south and following UTM coordinates 521200, 3609600; 521200, 3609300; 521100, 3609300; 521100, 3609200; 521400, 3609200; 521400, 3609100; 521500, 3609100; 521500, 3608600; 521600, 3608600; 521600, 3608400; 521700, 3608400; 521700, 3608300; 521800, 3608300; 521800, 3608200; 521900, 3608200; 521900, 3608000; 522000, 3608000; 522000, 3607900; 522600, 3607900; 522600, 3607800; 522900, 3607800; 522900, 3607700; 523000, 3607700; 523000, 3607600; 523100, 3607600; 523100, 3607700; 523300, 3607700; 523300, 3607600; 523400, 3607600; 523400, 3607700; 523600, 3607700; 523600, 3607600; 524100, 3607600; 524100, 3607500; 524200, 3607500; 524200, 3607300; 524300, 3607300; 524300, 3607400; 524500, 3607400; 524500, 3607500; 524600, 3607500; 524600, 3607600; 524800, 3607600; 524800, 3607700; 524900, 3607700; 524900, 3607600; 525100, 3607600; 525100, 3607900; 524900, 3607900; 524900, 3608000; 524700, 3608000; 524700, 3608200; 524600, 3608200; 524600, 3608400; 524700, 3608400; 524700, 3608600; thence east to Highway 94 at UTM y-coordinate 3608600; thence southeastward along Highway 94 to UTM x-coordinate 534000; thence south and following UTM coordinates (E, N) 534000, 3606900; 534000, 3606600; 534100, 3606600; 534100, 3606500; 534500, 3606500; 534500, 3606400; 534700, 3606400; 534700, 3606300; 534800, 3606300; 534800, 3606200; 534900, 3606200; 534900, 3606100; 535000, 3606100; 535000, 3606000; 535100, 3606000; 535100, 3605600; 535200, 3605600; 535200, 3605300; 535100, 3605300; 535100, 3605000; 535000, 3605000; 535000, 3604800; 534900, 3604800; 534900, 3604700; 534800, 3604700; 534800, 3604600; 534700, 3604600; 534700, 3604500; 534800, 3604500; 534800, 3604400; 534600, 3604400; 534600, 3604300; 534700, 3604300; 534700, 3604200; thence south to the U.S./ Mexico border at UTM x-coordinate 534700; returning to the point of beginning on the U.S./Mexico border at UTM x-coordinate 507800; excluding the Otay landfill; the planned recreational areas in the Otay River Valley and the university site as illustrated in the City of Chula Vista's

subarea plan; land bounded by the following UTM coordinates (E, N) 508700, 3602200; 508700, 3602100; 508800, 3602100; 508800, 3602200; 508700, 3602200; and land bounded by the following UTM coordinates (E, N) 514700, 3610400; 515200, 3610400; 515200, 3610200; 515100, 3610200; 515100, 3610100; 515300, 3610100; 515300, 3610200; 515500, 3610200; 515500, 3610300; 515700, 3610300; 515700, 3610400; 516000, 3610400; 516000, 3610300; 516100, 3610300; 516100, 3610000; 516200, 3610000; 516200, 3609800; 516300, 3609800; 516300, 3609400; 516400, 3609400; 516400, 3609200; 516500, 3609200; 516500, 3609000; 516700, 3609000; 516700, 3608900; 516800, 3608900; 516800, 3608800; 517000, 3608800; 517000, 3608700; 517100, 3608700; 517100, 3608300; 517200, 3608300; 517200, 3608200; 517300, 3608200; 517300, 3608300; 517500, 3608300; 517500, 3608200; 517600, 3608200; 517600, 3608000; 517500, 3608000; 517500, 3607900; 517700, 3607900; 517700, 3608000; 517800, 3608000; 517800, 3608100; 518000, 3608100; 518000, 3608000; 518100, 3608000; 518100, 3608200; 518200, 3608200; 518200, 3608300; 518300, 3608300; 518300, 3608400; 518400, 3608400; 518400, 3608500; 518500, 3608500; 518500, 3608600; 518800, 3608600; 518800, 3608000; 518700, 3608000; 518700, 3607900; 518600, 3607900; 518600, 3607500; 518700, 3607500; 518700, 3607200; 518600, 3607200; 518600, 3607000; 518400, 3607000; 518400, 3606600; 518200, 3606600; 518200, 3606500; 517900, 3606500; 517900, 3606600; 516900, 3606600; 516900, 3606500; 516400, 3606500; 516400, 3606600; 515900, 3606600; 515900, 3606500; 515500, 3606500; 515500, 3606600; 515400, 3606600; 515400, 3606700; 515200, 3606700; 515200, 3606800; 515100, 3606800; 515100, 3606700; 515000, 3606700; 515000, 3606500; 514900, 3606500; 514900, 3606400; 514800, 3606400; 514800, 3606300; 514700, 3606300; 514700, 3606100; 514500, 3606100; 514500, 3606000; 514400, 3606000; 514400, 3605900; 514300, 3605900; 514300, 3605800; 514200, 3605800; 514200, 3605700; 514000, 3605700; 514000, 3605600; 513800, 3605600; 513800, 3605500; 513500, 3605500; 513500, 3605600; 513300, 3605600; 513300, 3605700; 512800, 3605700; 512800, 3605800; 512700, 3605800; 512700, 3605900; 512800, 3605900; 512800, 3606000; 512900, 3606000; 512900, 3606400; 512700, 3606400; 512700, 3606700; 512800, 3606700; 512800, 3607000; 512900, 3607000; 512900, 3607100; 512800, 3607100; 512800, 3607200; 512700, 3607200; 512700, 3607300; 513000, 3607300; 513000, 3607500; 512900, 3607500; 512900, 3607700; 512800, 3607700; 512800, 3607800; 512700, 3607800; 512700, 3607900; 512800, 3607900; 512800, 3608000; 512600, 3608000; 512600, 3608200; 512800, 3608200; 512800, 3608300; 512900, 3608300; 512900, 3608700; 513100, 3608700; 513100, 3608800; 513200, 3608800; 513200, 3609100; 513100, 3609100; 513100, 3609400; 513000, 3609400; 513000, 3609600; 513200, 3609600; 513200, 3609700; 513600, 3609700; 513600, 3609600; 513900, 3609600; 513900, 3609500; 514300, 3609500; 514300, 3609600; 514400, 3609600; 514400, 3609500; 514500, 3609500; 514500, 3609400; 514600, 3609400; 514600, 3609300; 514900, 3609300; 514900, 3609400; 514800, 3609400; 514800, 3609600; 514700, 3609600; 514700, 3609700; 514600, 3609700; 514600, 3609900; 514700, 3609900; 514700, 3610400.

(ii) Map Unit 3 follows:

BILLING CODE 4310–55–P

BILLING CODE 4310–55–C

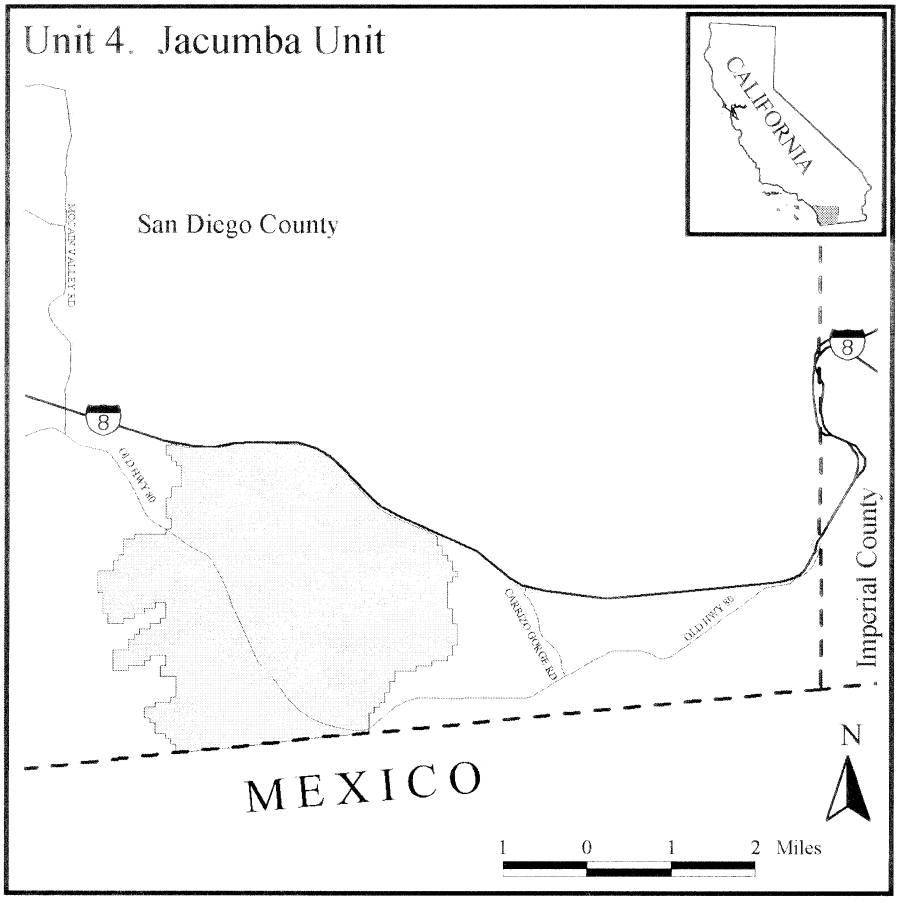
(9) Unit 4: Jacumba, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Jacumba, Jacumba OE S, and Live Oak Springs. Beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 575300, lands bounded by the following UTM NAD27 coordinates (E, N): 575300, 3608400; 575300, 3608700; 575400, 3608700; 575400, 3608800; 575500, 3608800; 575500, 3608900; 575600, 3608900; 575600, 3609100; 575700, 3609100; 575700, 3609300; 575800, 3609300; 575800, 3609500; 576200, 3609500; 576200, 3609600; 576500, 3609600; 576500, 3609700; 576800, 3609700; 576800, 3609800; 576900, 3609800; 576900, 3610000; 577000, 3610000; 577000, 3610400; 576900, 3610400; 576900, 3610700; 576800, 3610700; 576800, 3611200; 576900, 3611200; 576900, 3611300; 577000, 3611300; 577000, 3611400; 576900, 3611400; 576900,

3611600; 576800, 3611600; 576800, 3611700; 576700, 3611700; 576700, 3611900; 576600, 3611900; thence north to Interstate 8 at UTM x-coordinate 576600; thence west along Interstate 8 to UTM x-coordinate 571500, thence southward following UTM coordinates (E, N) 571500, 3613800; 571400, 3613800; 571400, 3613600; 571500, 3613600; 571500, 3613500; 571600, 3613500; 571600, 3613400; 571700, 3613400; 571700, 3613000; 571500, 3613000; 571500, 3612800; 571400, 3612800; 571400, 3612400; 571500, 3612400; 571500, 3612200; 571400, 3612200; 571400, 3612100; 570800, 3612100; 570800, 3612000; 570600, 3612000; 570600, 3611700; 570500, 3611700; 570500, 3611600; 570400, 3611600; 570400, 3611400; 570100, 3611400; 570100, 3611000; 570200, 3611000; 570200, 3610600; 570300, 3610600; 570300, 3610400; 570600, 3610400; 570600, 3610500; 570800, 3610500; 570800, 3610600; 571000, 3610600; 571000, 3610700; 571200, 3610700; 571200, 3610800; 571400, 3610800; 571400, 3610500; 571300, 3610500; 571300, 3610400; 571100, 3610400; 571100, 3610300; 570900, 3610300; 570900, 3610200; 570800, 3610200; 570800, 3610100; 570700, 3610100; 570700, 3609900; 570400, 3609900; 570400, 3609500; 570700, 3609500; 570700, 3609600; 571000, 3609600; 571000, 3609700; 571100, 3609700; 571100, 3609800; 571400, 3609800; 571400, 3609600; 571300, 3609600; 571300, 3609400; 571600, 3609400; 571600, 3609000; 571500, 3609000; 571500, 3608900; 571200, 3608900; 571200, 3608800; 571000, 3608800; 571000, 3608600; 571100, 3608600; 571100, 3608500; 571200, 3608500; 571200, 3608300; 571400, 3608300; 571400, 3608200; 571500, 3608200; 571500, 3608100; 571600, 3608100; thence south to the U.S./Mexico border at UTM x-coordinate 571600; returning to the point of beginning on the U.S./Mexico border at UTM x-coordinate 575300.

(ii) Map Unit 4 follows:

BILLING CODE 4310–55–P



* * * * *

Dated: April 2, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–8525 Filed 4–12–02; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Monday,
April 15, 2002

Part IV

Department of Housing and Urban Development

24 CFR Part 3284
Manufactured Housing Program Fee; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3284

[Docket No. FR–4665–P–01]

RIN 2502–AH62

Manufactured Housing Program Fee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: In accordance with recent statutory direction, the Department is publishing this proposed rule to modify the amount of the fee that is collected from manufacturers of manufactured homes to fund HUD's responsibilities under the National Manufactured Housing and Safety Standards Act of 1974 and to set minimum payments to the States.

DATES: *Comment Due Date:* May 15, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Acting Director, Office of Consumer and Regulatory Affairs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–6401 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Department is initiating this rulemaking to modify the amount of the fee that will be collected from manufactured home manufacturers in accordance with section 620(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). These fees are used to offset HUD's expenses for carrying out its responsibilities under the Act and have not been increased for twelve years. Section 620(d) of the Act, added by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) (the MHI Act) provides that the amount of any fee ''may only be modified: (1) As specifically authorized in advance in an annual appropriations Act; and (2) pursuant to rulemaking in accordance with section 553 of title 5, United States Code.'' (Section 553 of title 5, United States Code contains the ''informal'' rulemaking requirements of the Administrative Procedure Act.) Section 620(e) of the Act (unless otherwise noted in this preamble, references to a section of the Act include the amendments made to that section by the MHI Act) further provides that amounts from any fee shall be available for expenditure only to the extent approved in advance in an annual appropriations Act.

The fee that HUD collects under the Act is levied upon the transportable sections of each new manufactured housing unit, and the total amount of the fees that HUD collects annually is dependent upon the number of transportable sections produced per year. The amendments made by the MHI Act in section 620(d) of the Act, which make the modification of the amount of the fee subject to implementation only pursuant to rulemaking in accordance with section 553 of title 5, United States Code, prompt this rulemaking.

This rule would establish a new part 3284, under which the amount of the fee would be codified. The amount proposed in this rule would be determined by dividing the annual projected number of manufactured housing transportable units into the amount appropriated for the Federal Fiscal Year (FFY) to establish the amount of the fee per transportable section. The amount appropriated for FFY 2002 by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, (Pub. L. 107–73, 115 Stat. 651, approved November 27, 2001) (FFY 2002 Appropriations Act) is $13,566,000. The projected number of transportable sections for the fiscal year is 350,000. This number was determined by using production figures compiled over the last three years, projections of production from manufactured housing trade associations, and projections offered by manufacturers. HUD is specifically inviting comment on the projected number of transportable sections. The use of this number would result in a revised fee of $39.

In accordance with section 620(e)(3) of the Act, which was also added by the MHI Act, this rule also provides that HUD will continue to fund States having approved State plans in amounts not less than the allocated amounts, based on the fee distribution system in effect on December 26, 2000. The yearly payment to a State would be set by this rule as not less than the amount paid to that State for the 12 months ending on December 26, 2000.

II. Findings and Certifications

Justification for 30-Day Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days to make the amount of the fee effective as soon as possible so that funds will be available to offset the expenses incurred by HUD in connection with the manufactured housing program authorized by the Act.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule will have a total economic impact this Federal Fiscal Year of no more than $13,566,000, the amount approved by Congress in HUD's FY 2002 Appropriations Act. Congress further requires HUD to collect this amount in fees from manufacturers of manufactured housing, and the rule would implement this mandate by establishing a per unit fee on transportable sections of manufactured

housing that would be proportional in its impact, with a greater impact on larger manufacturers and a lesser impact on smaller manufacturers. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–0500.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to add 24 CFR part 3284, as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

Sec.
3284.1 Applicability.
3284.5 Amount of fee.
3284.10 Payment to States.

Authority: 42 U.S.C. 5419 and 5424; 42 U.S.C. 3535(d).

§ 3284.1. Applicability.

This part applies to manufacturers that are subject to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). The amounts established under this part for any fee collected from manufacturers will be used, to the extent approved in advance in an annual appropriations Act, to offset the expenses incurred by HUD in connection with the manufactured housing program authorized by the Act.

§ 3284.5 Amount of fee.

Each manufacturer must pay a fee of $39 (the amount resulting from dividing $13,566,000, the amount appropriated for this purpose by Congress for Federal Fiscal Year (FFY) 2002, by 350,000, the projected total number of transportable sections that will be produced in FFY 2002, based on industry production figures) per transportable section of manufactured housing unit that it manufactures under the requirements of part 3280 of this title.

§ 3284.10 Payment to States.

Each calendar year, HUD will pay each State that, on December 27, 2000, had a State plan approved pursuant to subpart G of part 3282 of this title, a total amount that is not less than the amount paid to that State for the 12 months ending at the close of business on December 26, 2000.

Dated: March 14, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–9000 Filed 4–12–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday,
April 15, 2002

Part V

Department of Housing and Urban Development

Notice of Annual Factors for Determining Public Housing Agency Ongoing Administrative Fees for the Housing Choice Voucher Program and Moderate Rehabilitation Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4729–N–01]

Notice of Annual Factors for Determining Public Housing Agency Ongoing Administrative Fees for the Housing Choice Voucher Program and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces the Federal Fiscal Year (FY) 2002 monthly on-going administrative fee amount paid to public housing agencies (PHAs) administering tenant-based assistance under the Housing Choice Voucher Program, and project-based assistance under the Project-based Certificate Program, the Project-based Voucher Program, and the Moderate Rehabilitation Programs (including Moderate Rehabilitation Single Room Occupancy). The notice also describes other fees, in addition to the on-going administrative fees, that may be approved by HUD for PHA costs of program administration.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone number (202) 708–0477 (this is not a toll-free telephone number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Applicability

HUD pays administrative fees to a PHA that administers housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) in accordance with the annual contributions contract between HUD and the PHA. This notice establishes FY 2002 on-going administrative fees for public housing agencies (PHAs) administering the following programs: tenant-based assistance under the Housing Choice Voucher Program, project-based assistance under the Project-based Certificate Program, the Project-based Voucher Program, and the Moderate Rehabilitation Program (including Moderate Rehabilitation Single Room Occupancy).

The FY 2002 on-going administrative fee amounts in this notice are used to calculate fees earned by a PHA for unit months in Federal FY 2002; that is, for unit months from October 1, 2001 to September 30, 2002. HUD will use the on-going fee amount in this notice for review and approval of year-end financial statements for PHA fiscal years ending on December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. However, this notice only establishes on-going fee amount used to calculate the PHA's administrative fee for the portion of the PHA fiscal year that falls in Federal FY 2002. On-going fees for unit months in Federal FY 2001 are calculated in accordance with the fee notice for FY 2001 published in the **Federal Register** on June 11, 2001 (66 FR 31281).

The PHA must use the on-going fee amounts specified in this notice to project earned administrative fees in the annual PHA budget.

II. Statutory Background

In accordance with the HUD Appropriation Act for FY 2002 (as was the case in fiscal years 1999, 2000, and 2001), PHA administrative fees are determined in accordance with Section 202 of the HUD Appropriation Act for Federal FY 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1996), which established the requirements for calculating PHA on-going administrative fees in effect immediately before enactment of the Quality Housing and Work Responsibility Act of 1998. (Pub. L. 105–276, 115, 2461, approved October 21, 1998).

As in prior fiscal years, under the pre-FY 99 administrative fee requirements, the on-going administrative fees for the first 600 units in a PHA's Housing Choice Voucher Program is an amount that is 7.5 percent of the base amount for the first 600 units, 7.0 percent of the base amount for each additional voucher above 600 units and 3.0 percent of the base amount for a PHA owned unit. The base amount is adjusted annually.

This notice specifies the on-going administrative fee for PHAs administering the Housing Choice Voucher Program or the Moderate Rehabilitation Programs (including Moderate Rehabilitation Single Room Occupancy) during FY 2002.

III. On-Going Monthly Administrative Fee

(1) *How on-going administrative fees are calculated.* A PHA is paid an on-going administrative fee for each unit month for which a dwelling unit is covered by a housing assistance payments contract on the first day of the month. In each case, the on-going administrative fee is a specified percentage of a defined ''base amount''.

(2) *The Base Amount.* The amount of the per unit on-going administrative fee is adjusted each year based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program. At this time, this adjustment is implemented by adjusting the base amount to reflect average local government wages as measured by the most recent Bureau of Labor Statistics data on local government wages (ES–202 series).

(3) *Percentage applied to adjusted base amount.* Under the fee system, the following percentages are applied to the adjusted base amount:

(i) *For all units except PHA-owned.*

(A) *600 unit threshold.* 7.5 percent of the adjusted ''base amount'' for the first 600 units in a covered program. This threshold is applied separately to determine the on-going fees earned:

(1) For the PHA's Tenant-based Voucher Program, Project-based Voucher Program and Project-based Certificate Program; and

(2) For the PHA's Moderate Rehabilitation Programs (including Moderate Rehabilitation Single Room Occupancy).

(B) *Units exceeding 600 unit threshold.* 7.0 percent of the adjusted ''base amount'' for each additional unit in the program above the 600-unit threshold.

(ii) *For PHA-owned units.* 3.0 percent of the adjusted ''base amount for each PHA-owned unit.

IV. Other Administrative Fees

HUD may approve administrative fees in addition to the on-going administrative fee. The types of additional fees that are currently permitted are described in PIH Notice 2002–7 (HA), issued March 12, 2002.

1. *Hard-to-House Fee.* HUD may pay a special fee to a PHA for costs incurred in assisting families who experience difficulty, as determined by HUD, in finding or leasing appropriate housing under the Housing Choice Voucher Program. Hard to house fees include the following:

(a) *Hard-to-House Fees for Large Families.* The PHA will be paid $75 every time a hard-to-house family is actually housed in a unit other than the family's pre-program unit.

(b) *Hard-to-House Fee for a Family that Includes a Person with Disabilities.*

The PHA will be paid $75 every time a family that includes a person with disabilities is actually housed in a unit other than the family's preprogram unit. HUD pays the PHA a hard-to-house fee for the extra effort provided by the PHA in assisting a family that includes a person with disabilities to enable them to find appropriate housing.

2. *Fee for Extraordinary Costs.* HUD may pay a special one-time fee for extraordinary costs incurred by the PHA in the operation of the Housing Choice Voucher Program, as approved by the Assistant Secretary for Public and Indian Housing.

3. *Housing Conversion Actions.* HUD provides housing choice voucher assistance to assist eligible residents that are affected by several different types of owner or HUD actions (collectively described as ''housing conversion actions''). When a PHA receives a special allocation of voucher funding from HUD for a housing conversion action, the PHA will receive a fee. The amount of the fee is $250 per unit for the total number of occupied units covered by the housing conversion actions; preservation prepayments; project-based opt-outs; HUD enforcement actions, or HUD property disposition.

Other voucher conversions actions, such as public housing replacements or Section 8 moderate rehabilitation contract expirations, are not eligible for the fee for the housing conversion action.

4. *Preliminary Fees.* A PHA may earn a preliminary fee of $500 per unit as reimbursement for preliminary expenses the PHA incurred in the first year the PHA administers the first increment of funding for assistance under the Housing Choice Voucher Program.

5. *Lead Based Paint Fee for Initial Clearance Test.* HUD pays a PHA $150 to conduct the initial lead-based paint hazard clearance test on paint stabilization efforts in a unit occupied by a family with a child under the age of six in connection with the PHA's housing quality standards inspections before and during assisted occupancy. Paint stabilization is required at 24 CFR part 35. The initial testing is performed on units that have deteriorated paint above the de minimis level specified in the lead-based paint regulations following repair of the deteriorated paint. See 24 CFR 35.1330(a)(3).

6. *Lead Based Paint Risk Assessment Fee.* The PHA must conduct a risk assessment of a unit in which a child under the age of six, with an environmental intervention blood-lead level (EIBLL), has lived at the time the child's blood was last sampled, unless an evaluation has already been conducted by the public health department. HUD pays a PHA $350 each time a risk assessment of a unit is conducted on behalf of a family with a child under the age of six with an EIBLL and where the family is assisted by the Housing Choice Voucher Program. The EIBLL must be identified by the local health department or other medical provider during the time the family resided in the unit.

V. On-Going Administrative Fee Amounts

A schedule of the monthly per unit on-going administrative fee amounts for FY 2002 is attached to this Notice. The schedule shall be used to determine the amount of FY 2002 on-going administrative fees in PHA budgets and fiscal year-end financial statements.

The schedule establishes the on-going administrative fee amounts for each fair market rent (FMR) area. If a PHA's jurisdiction includes more than one FMR area (*e.g.*, for a PHA with State-wide jurisdiction), the PHA's earned fees for administration of dwelling units leased in each FMR area are calculated using the on-going administrative fee amounts on the schedule for the FMR area where the units are actually located.

The schedules show the monthly on-going administrative fee amounts a PHA earns for each unit under a housing assistance payment contract on the first day of the applicable month during Federal FY 2002. On-going administrative fees earned for the portion of a PHA's fiscal year that falls in the preceding FY (*e.g.*, the first 3 quarters of a fiscal year ending December 31, 2001) shall be determined in accordance with the notice published in the **Federal Register** on June 11, 2001 (66 FR 31281).

The schedule is arranged in three columns (designated as Columns A, B, and C). As described in more detail below, Column A establishes the on-going administrative fee amount for the first 600 units (except PHA-owned units) in the PHA's Voucher Program or Moderate Rehabilitation Program, Column B establishes the on-going administrative fee amount for additional units (except PHA-owned units) in the PHA's Voucher or Moderate Rehabilitation Program, and Column C establishes the on-going administrative fee amount for PHA-owned units.

Column A: On-going administrative fees for 600 units or less. The amount in Column A is the monthly per unit fee amount used to compute the FY 2002 on-going administrative fees earned by the PHA:

1. For the first 600 units (up to 7,200 unit months) assisted in the PHA's Housing Choice Voucher Program, including project-based voucher and project-based certificate units administered by the PHA.

2. For the first 600 units (up to 7,200 unit months) assisted in the PHA's Moderate Rehabilitation Program including the Moderate Rehabilitation Single Room Occupancy Program.

How to calculate the PHA's on-going administrative fees earned.

The monthly on-going administrative fee is computed by multiplying the number of unit months that were under a housing assistance payments contract during FY 2002 by the monthly per unit on-going fee amount in Column A (up to a maximum of 7,200 unit months during FY 2002). The maximum number of unit months for which the Column A fee amount may be used depends on the PHA FY end.

Depending on the PHA's fiscal year end, a PHA must use the applicable maximum number of Column A unit months to calculate its total on-going administrative fee income for FY 2002:

PHA fiscal year end	Maximum number of unit months
December 31, 2001 ..	Up to 1,800.
March 31, 2002	Up to 3,600.
June 30, 2002	Up to 5,400.
September 30, 2002	Up to 7,200.

Column B: On-going administrative fees for unit months in excess of the Column A unit months. The amount in Column B is the monthly per unit fee amount used to compute the FY 2002 on-going administrative fees earned by the PHA for any unit months in excess of Column A unit months (not including unit months for any PHA-owned units). The PHA's total Column B fee income is computed by multiplying the applicable Column B amount times the number of excess unit months. Otherwise stated, the Column B amount is used to calculate PHA's earned administrative fees for total FY 2002 unit months minus (1) the number of unit months for PHA-owned units, and (2) the number of Column A unit months.

Column C: On-going administrative fees for PHA-Owned units. The administrative fee earned for administration of assistance in FY 2002 to families residing in PHA-owned dwelling units is calculated by multiplying the monthly per unit fee amount in Column C times the number of unit months leased in PHA-owned units. Column A and Column B fee amounts are not used for PHA-owned units.

On-going administrative fees for units under portability. The on-going administrative fee amounts used for reimbursing receiving PHAs for all portable units will be determined by using the monthly per unit on-going administrative fee amounts in column B for the initial PHA. The receiving PHA administering the portable housing choice voucher will receive 80 percent of the Column B amount and the initial PHA will receive 20 percent of the Column B amount, unless otherwise agreed upon by both PHAs.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0149. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice set forth rate determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 13132, Federalism

Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this notice will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.850.

Dated: April 5, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

FY 2002 SECTION 8 ADMINISTRATIVE FEES

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A B A M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anniston, AL MSA	42.89	40.02	17.15	Calhoun
Aurburn-Opelika, Al MSA	42.89	40.02	17.15	Lee
Birmingham, AL MSA	43.66	40.75	17.46	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	42.89	40.02	17.15	Russell
Decatur, AL MSA	42.89	40.02	17.15	Lawrence, Morgan
Dothan, AL MSA	42.89	40.02	17.15	Dale, Houston
Florence, AL MSA	42.89	40.02	17.15	Colbert, Lauderdale
Gadsden, AL MSA	42.89	40.02	17.15	Etowah
Huntsville, AL MSA	44.36	41.41	17.74	Limestone, Madison
Mobile, AL MSA	44.35	41.39	17.74	Baldwin, Mobile
Montgomery, AL MSA	42.89	40.02	17.15	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	42.89	40.02	17.15	Tuscaloosa

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	42.89	40.02	17.15	Bibb	42.89	40.02	17.15
Bullock	42.89	40.02	17.15	Butler	42.89	40.02	17.15
Chambers	42.89	40.02	17.15	Cherokee	42.89	40.02	17.15
Chilton	42.89	40.02	17.15	Choctaw	42.89	40.02	17.15
Clarke	42.89	40.02	17.15	Clay	42.89	40.02	17.15
Cleburne	42.89	40.02	17.15	Coffee	42.89	40.02	17.15
Conecuh	42.89	40.02	17.15	Coosa	42.89	40.02	17.15
Covington	42.89	40.02	17.15	Crenshaw	42.89	40.02	17.15
Cullman	42.89	40.02	17.15	Dallas	42.89	40.02	17.15
Dekalb	42.89	40.02	17.15	Escambia	42.89	40.02	17.15
Fayette	42.89	40.02	17.15	Franklin	42.89	40.02	17.15
Geneva	42.89	40.02	17.15	Greene	42.89	40.02	17.15
Hale	42.89	40.02	17.15	Henry	42.89	40.02	17.15
Jackson	42.89	40.02	17.15	Lamar	42.89	40.02	17.15
Lowndes	42.89	40.02	17.15	Macon	42.89	40.02	17.15
Marengo	42.89	40.02	17.15	Marion	42.89	40.02	17.15
Marshall	42.89	40.02	17.15	Monroe	42.89	40.02	17.15
Perry	42.89	40.02	17.15	Pickens	42.89	40.02	17.15
Pike	42.89	40.02	17.15	Randolph	42.89	40.02	17.15
Sumter	42.89	40.02	17.15	Talladega	42.89	40.02	17.15
Tallapoosa	42.89	40.02	17.15	Walker	42.89	40.02	17.15
Washington	42.89	40.02	17.15	Wilcox	42.89	40.02	17.15
Winston	42.89	40.02	17.15				

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anchorage, AK MSA	62.45	58.29	24.98	Anchorage

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Aleutian East	65.49	61.13	26.20	Aleutian West	65.49	61.13	26.20
Bethel	67.78	63.26	27.11	Bristol Bay	65.49	61.13	26.20
Dillingham	67.78	63.26	27.11	Fairbanks North Star	64.38	60.09	25.75
Haines	65.49	61.13	26.20	Juneau	75.13	70.12	30.05
Kenai Peninsula	60.50	56.46	24.20	Ketchikan Gateway	75.13	70.12	30.05
Kodiak Island	75.13	70.12	30.05	Lake & Peninsula	62.22	58.08	24.89
Matanuska-Susitna	55.67	51.96	22.27	Nome	67.78	63.26	27.11
North Slope	67.78	63.26	27.11	Northwest Arctic	62.22	58.08	24.89
Pr.Wales-Outer Ketchikan	65.49	61.13	26.20	Sitka	73.56	68.65	29.42
Skagway-Yakutat-Angoon	65.49	61.13	26.20	Southeast Fairbanks	53.91	50.32	21.56
Valdez-Cordova	75.13	70.12	30.05	Wade Hampton	65.49	61.13	26.20
Wrangell-Petersburg	73.56	68.65	29.42	Yukon-Koyukuk	65.49	61.13	26.20

A R I Z O N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Flagstaff, AZ	52.33	48.84	20.93	Coconino
Las Vegas, NV-AZ MSA	64.28	60.01	25.71	Mohave
Phoenix-Mesa, AZ MSA	47.86	44.66	19.15	Maricopa, Pinal
Tucson, AZ MSA	47.32	44.16	18.93	Pima
Yuma, AZ MSA	53.18	49.63	21.27	Yuma

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Apache	37.15	34.67	14.86	Cochise	37.82	35.30	15.13
Gila	38.50	35.93	15.40	Graham	37.82	35.30	15.13
Greenlee	37.82	35.30	15.13	La Paz	47.99	44.79	19.20
Navajo	37.15	34.67	14.86	Santa Cruz	39.14	36.53	15.66
Yavapai	47.15	44.01	18.86				

A R K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	39.39	36.76	15.76	Benton, Washington
Fort Smith, AR-OK MSA	39.39	36.76	15.76	Crawford, Sebastian
Jonesboro, AR MSA	39.39	36.76	15.76	Craighead
Little Rock-North Little Rock, AR MSA	42.97	40.11	17.19	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	44.62	41.65	17.85	Crittenden

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A R K A N S A S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	39.39	36.76	15.76	Jefferson
Texarkana, TX-Texarkana, AR MSA	39.47	36.83	15.79	Miller

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Arkansas	38.58	36.01	15.43	Ashley	38.58	36.01	15.43
Baxter	38.58	36.01	15.43	Boone	38.58	36.01	15.43
Bradley	38.58	36.01	15.43	Calhoun	38.58	36.01	15.43
Carroll	38.58	36.01	15.43	Chicot	38.58	36.01	15.43
Clark	38.58	36.01	15.43	Clay	38.58	36.01	15.43
Cleburne	38.58	36.01	15.43	Cleveland	38.58	36.01	15.43
Columbia	38.58	36.01	15.43	Conway	38.58	36.01	15.43
Cross	38.58	36.01	15.43	Dallas	38.58	36.01	15.43
Desha	38.58	36.01	15.43	Drew	38.58	36.01	15.43
Franklin	38.58	36.01	15.43	Fulton	38.58	36.01	15.43
Garland	38.58	36.01	15.43	Grant	38.58	36.01	15.43
Greene	38.58	36.01	15.43	Hempstead	38.58	36.01	15.43
Hot Spring	38.58	36.01	15.43	Howard	38.58	36.01	15.43
Independence	38.58	36.01	15.43	Izard	38.58	36.01	15.43
Jackson	38.58	36.01	15.43	Johnson	38.58	36.01	15.43
Lafayette	38.58	36.01	15.43	Lawrence	38.58	36.01	15.43
Lee	38.58	36.01	15.43	Lincoln	38.58	36.01	15.43
Little River	38.58	36.01	15.43	Logan	38.58	36.01	15.43
Madison	38.58	36.01	15.43	Marion	38.58	36.01	15.43
Mississippi	38.58	36.01	15.43	Monroe	38.58	36.01	15.43
Montgomery	38.58	36.01	15.43	Nevada	38.58	36.01	15.43
Newton	38.58	36.01	15.43	Ouachita	38.58	36.01	15.43
Perry	38.58	36.01	15.43	Phillips	38.58	36.01	15.43
Pike	38.58	36.01	15.43	Poinsett	38.58	36.01	15.43
Polk	38.58	36.01	15.43	Pope	38.58	36.01	15.43
Prairie	38.58	36.01	15.43	Randolph	38.58	36.01	15.43
St. Francis	38.58	36.01	15.43	Scott	38.58	36.01	15.43
Searcy	38.58	36.01	15.43	Sevier	38.58	36.01	15.43
Sharp	38.58	36.01	15.43	Stone	38.58	36.01	15.43
Union	38.58	36.01	15.43	Van Buren	38.58	36.01	15.43
White	38.58	36.01	15.43	Woodruff	38.58	36.01	15.43
Yell	38.58	36.01	15.43				

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C A L I F O R N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bakersfield, CA MSA	55.89	52.16	22.36	Kern
Chico-Paradise, CA MSA	49.11	45.83	19.64	Butte
Fresno, CA MSA	51.10	47.69	20.44	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	73.34	68.46	29.34	Los Angeles
Merced, CA MSA	48.02	44.82	19.21	Merced
Modesto, CA MSA	53.81	50.22	21.52	Stanislaus
Oakland, CA PMSA	73.34	68.46	29.34	Alameda, Contra Costa
Orange County, CA PMSA	73.34	68.46	29.34	Orange
Redding, CA MSA	51.10	47.69	20.44	Shasta
Riverside-San Bernardino, CA PMSA	58.51	54.61	23.40	Riverside, San Bernardino
Sacramento, CA PMSA	55.70	51.98	22.28	El Dorado, Placer, Sacramento
Salinas, CA MSA	63.18	58.97	25.27	Monterey
San Diego, CA MSA	65.57	61.20	26.23	San Diego
San Francisco, CA PMSA	73.34	68.46	29.34	Marin, San Francisco, San Mateo
San Jose, CA PMSA	73.34	68.46	29.34	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA MSA	63.48	59.26	25.39	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	71.61	66.83	28.64	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	73.34	68.46	29.34	Santa Cruz
Santa Rosa, CA PMSA	71.53	66.77	28.61	Sonoma
Stockton-Lodi, CA MSA	53.45	49.89	21.38	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	63.67	59.42	25.47	Napa, Solano
Ventura, CA PMSA	73.34	68.46	29.34	Ventura
Visalia-Tulare-Porterville, CA MSA	47.66	44.48	19.06	Tulare
Yolo, CA PMSA	55.70	51.98	22.28	Yolo
Yuba City, CA MSA	42.26	39.44	16.90	Sutter, Yuba

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alpine	55.86	52.14	22.34	Amador	55.86	52.14	22.34
Calaveras	55.86	52.14	22.34	Colusa	42.26	39.44	16.90
Del Norte	50.99	47.59	20.40	Glenn	42.26	39.44	16.90
Humboldt	52.53	49.03	21.01	Imperial	52.98	49.45	21.19
Inyo	55.86	52.14	22.34	Kings	45.95	42.89	18.38
Lake	50.99	47.59	20.40	Lassen	46.67	43.56	18.67
Mariposa	55.86	52.14	22.34	Mendocino	54.96	51.30	21.98
Modoc	46.67	43.56	18.67	Mono	57.82	53.96	23.13
Nevada	62.62	58.44	25.05	Plumas	46.67	43.56	18.67
San Benito	57.82	53.96	23.13	Sierra	62.62	58.44	25.05
Siskiyou	46.67	43.56	18.67	Tehama	46.67	43.56	18.67
Trinity	50.99	47.59	20.40	Tuolumne	55.86	52.14	22.34

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH PAGE 5

C O L O R A D O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	55.82	52.09	22.33	Boulder
Colorado Springs, CO MSA	45.89	42.83	18.36	El Paso
Denver, CO PMSA	49.19	45.91	19.67	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	52.90	49.37	21.16	Larimer
Grand Junction, CO MSA	57.54	53.70	23.01	Mesa
Greeley, CO PMSA	45.61	42.58	18.24	Weld
Pueblo, CO MSA	45.43	42.40	18.17	Pueblo

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alamosa	47.42	44.26	18.97	Archuleta	47.42	44.26	18.97
Baca	40.60	37.89	16.24	Bent	40.60	37.89	16.24
Chaffee	52.64	49.13	21.06	Cheyenne	40.60	37.89	16.24
Clear Creek	52.64	49.13	21.06	Conejos	47.42	44.26	18.97
Costilla	47.42	44.26	18.97	Crowley	40.60	37.89	16.24
Custer	52.64	49.13	21.06	Delta	62.69	58.51	25.08
Dolores	47.42	44.26	18.97	Eagle	64.89	60.56	25.96
Elbert	42.01	39.22	16.80	Fremont	52.64	49.13	21.06
Garfield	59.94	55.94	23.98	Gilpin	54.48	50.85	21.79
Grand	62.69	58.51	25.08	Gunnison	62.69	58.51	25.08
Hinsdale	62.69	58.51	25.08	Huerfano	47.42	44.26	18.97
Jackson	62.69	58.51	25.08	Kiowa	40.60	37.89	16.24
Kit Carson	40.60	37.89	16.24	Lake	52.64	49.13	21.06
La Plata	53.77	50.19	21.51	Las Animas	47.42	44.26	18.97
Lincoln	40.60	37.89	16.24	Logan	40.60	37.89	16.24
Mineral	47.42	44.26	18.97	Moffat	59.94	55.94	23.98
Montezuma	47.42	44.26	18.97	Montrose	62.69	58.51	25.08
Morgan	40.60	37.89	16.24	Otero	40.60	37.89	16.24
Ouray	62.69	58.51	25.08	Park	52.64	49.13	21.06
Phillips	40.60	37.89	16.24	Pitkin	64.89	60.56	25.96
Prowers	40.60	37.89	16.24	Rio Blanco	59.94	55.94	23.98
Rio Grande	47.42	44.26	18.97	Routt	62.69	58.51	25.08
Saguache	47.42	44.26	18.97	San Juan	47.42	44.26	18.97
San Miguel	64.89	60.56	25.96	Sedgwick	40.60	37.89	16.24
Summit	62.69	58.51	25.08	Teller	52.93	49.40	21.17
Washington	40.60	37.89	16.24	Yuma	40.60	37.89	16.24

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bridgeport, CT PMSA	65.67	61.30	26.27	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	70.39	65.71	28.16	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT MSA	61.89	57.76	24.76	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	68.22	63.68	27.29	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	60.76	56.71	24.30	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	70.39	65.71	28.16	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT PMSA	55.70	51.99	22.28	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT PMSA	60.95	56.89	24.38	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Hartford	56.30	52.55	22.52	Hartland town
Litchfield	59.74	55.76	23.90	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	66.96	62.50	26.78	Chester town, Deep River town, Essex town Westbrook town
New London	48.03	44.83	19.21	Lyme town, Voluntown town
Tolland	62.58	58.41	25.03	Union town
Windham	55.42	51.72	22.17	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Dover, DE MSA	50.81	47.41	20.32	Kent
Wilmington-Newark, DE-MD PMSA	58.75	54.83	23.50	New Castle

NONMETROPOLITAN COUNTIES	A	B	C
Sussex	50.81	47.41	20.32

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Washington, DC-MD-VA	74.19	69.25	29.67	District of Columbia

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

F L O R I D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	51.51	48.08	20.60	Flagler, Volusia
Fort Lauderdale, FL PMSA	65.29	60.93	26.11	Broward
Fort Myers-Cape Coral, FL MSA	54.02	50.42	21.61	Lee
Fort Pierce-Port Lucie, FL MSA	54.74	51.09	21.90	Martin, St. Lucie
Fort Walton Beach, FL MSA	40.50	37.80	16.20	Okaloosa
Gainesville, FL MSA	46.18	43.10	18.47	Alachua
Jacksonville, FL MSA	48.67	45.42	19.47	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	42.76	39.92	17.11	Polk
Melbourne-Titusville-Palm Bay, FL MSA	49.55	46.25	19.82	Brevard
Miami, FL PMSA	69.73	65.08	27.89	Dade
Naples, FL MSA	56.22	52.46	22.49	Collier
Ocala, FL MSA	42.11	39.30	16.84	Marion
Orlando, FL MSA	53.67	50.08	21.47	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	40.50	37.80	16.20	Bay
Pensacola, FL MSA	42.11	39.30	16.84	Escambia, Santa Rosa
Punta Gorda, FL MSA	52.61	49.10	21.04	Charlotte
Sarasota-Bradenton, FL MSA	56.39	52.63	22.56	Manatee, Sarasota
Tallahassee, FL MSA	45.73	42.68	18.29	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	51.38	47.95	20.55	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	54.45	50.82	21.78	Palm Beach

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Baker	39.37	36.74	15.75	Bradford	43.51	40.61	17.40
Calhoun	39.37	36.74	15.75	Citrus	39.37	36.74	15.75
Columbia	39.37	36.74	15.75	Desoto	39.37	36.74	15.75
Dixie	39.37	36.74	15.75	Franklin	39.37	36.74	15.75
Gilchrist	39.37	36.74	15.75	Glades	49.67	46.36	19.87
Gulf	39.37	36.74	15.75	Hamilton	39.37	36.74	15.75
Hardee	39.37	36.74	15.75	Hendry	49.67	46.36	19.87
Highlands	39.37	36.74	15.75	Holmes	39.37	36.74	15.75
Indian River	53.02	49.49	21.21	Jackson	39.37	36.74	15.75
Jefferson	39.37	36.74	15.75	Lafayette	39.37	36.74	15.75
Levy	39.37	36.74	15.75	Liberty	39.37	36.74	15.75
Madison	39.37	36.74	15.75	Monroe	67.68	63.18	27.07
Okeechobee	39.37	36.74	15.75	Putnam	39.37	36.74	15.75
Sumter	39.37	36.74	15.75	Suwannee	39.37	36.74	15.75
Taylor	39.37	36.74	15.75	Union	39.37	36.74	15.75
Wakulla	39.37	36.74	15.75	Walton	39.37	36.74	15.75
Washington	39.37	36.74	15.75				

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany, GA MSA	42.57	39.73	17.03	Dougherty, Lee
Athens, GA MSA	42.69	39.86	17.08	Clarke, Madison, Oconee
Atlanta, GA MSA	57.31	53.48	22.92	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton
Augusta-Aiken, GA-SC MSA	42.69	39.86	17.08	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	44.43	41.46	17.77	Catoosa, Dade, Walker
Columbus, GA-AL MSA	42.89	40.02	17.15	Chattahoochee, Harris, Muscogee
Macon, GA MSA	42.57	39.73	17.03	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	43.50	40.60	17.40	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Appling	42.57	39.73	17.03	Atkinson	42.57	39.73	17.03
Bacon	42.57	39.73	17.03	Baker	42.57	39.73	17.03
Baldwin	42.57	39.73	17.03	Banks	42.57	39.73	17.03
Ben Hill	42.57	39.73	17.03	Berrien	42.57	39.73	17.03
Bleckley	42.57	39.73	17.03	Brantley	42.57	39.73	17.03
Brooks	42.57	39.73	17.03	Bulloch	42.57	39.73	17.03
Burke	42.57	39.73	17.03	Butts	57.69	53.84	23.07
Calhoun	42.57	39.73	17.03	Camden	42.57	39.73	17.03
Candler	42.57	39.73	17.03	Charlton	42.57	39.73	17.03
Chattooga	42.57	39.73	17.03	Clay	42.57	39.73	17.03
Clinch	42.57	39.73	17.03	Coffee	42.57	39.73	17.03
Colquitt	42.57	39.73	17.03	Cook	42.57	39.73	17.03
Crawford	42.57	39.73	17.03	Crisp	42.57	39.73	17.03
Dawson	42.57	39.73	17.03	Decatur	42.57	39.73	17.03
Dodge	42.57	39.73	17.03	Dooly	42.57	39.73	17.03
Early	42.57	39.73	17.03	Echols	42.57	39.73	17.03
Elbert	42.57	39.73	17.03	Emanuel	42.57	39.73	17.03
Evans	42.57	39.73	17.03	Fannin	42.57	39.73	17.03
Floyd	42.57	39.73	17.03	Franklin	42.57	39.73	17.03
Gilmer	42.57	39.73	17.03	Glascock	42.57	39.73	17.03
Glynn	42.57	39.73	17.03	Gordon	42.57	39.73	17.03
Grady	42.57	39.73	17.03	Greene	42.57	39.73	17.03
Habersham	42.57	39.73	17.03	Hall	47.05	43.91	18.82
Hancock	42.57	39.73	17.03	Haralson	42.57	39.73	17.03
Hart	42.57	39.73	17.03	Heard	42.57	39.73	17.03
Irwin	42.57	39.73	17.03	Jackson	42.57	39.73	17.03
Jasper	42.57	39.73	17.03	Jeff Davis	42.57	39.73	17.03
Jefferson	42.57	39.73	17.03	Jenkins	42.57	39.73	17.03

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Johnson	42.57	39.73	17.03
Lanier	42.57	39.73	17.03
Liberty	42.57	39.73	17.03
Long	42.57	39.73	17.03
Lumpkin	42.57	39.73	17.03
Macon	42.57	39.73	17.03
Meriwether	42.57	39.73	17.03
Mitchell	42.57	39.73	17.03
Montgomery	42.57	39.73	17.03
Murray	42.57	39.73	17.03
Pierce	42.57	39.73	17.03
Polk	42.57	39.73	17.03
Putnam	42.57	39.73	17.03
Rabun	42.57	39.73	17.03
Schley	42.57	39.73	17.03
Seminole	42.57	39.73	17.03
Stewart	42.57	39.73	17.03
Talbot	42.57	39.73	17.03
Tattnall	42.57	39.73	17.03
Telfair	42.57	39.73	17.03
Thomas	42.57	39.73	17.03
Toombs	42.57	39.73	17.03
Treutlen	42.57	39.73	17.03
Turner	42.57	39.73	17.03
Upson	42.57	39.73	17.03
Warren	42.57	39.73	17.03
Wayne	42.57	39.73	17.03
Wheeler	42.57	39.73	17.03
Whitfield	42.57	39.73	17.03
Wilkes	42.57	39.73	17.03
Worth	42.57	39.73	17.03

NONMETROPOLITAN COUNTIES	A	B	C
Lamar	42.57	39.73	17.03
Laurens	42.57	39.73	17.03
Lincoln	42.57	39.73	17.03
Lowndes	42.57	39.73	17.03
Mcintosh	42.57	39.73	17.03
Marion	42.57	39.73	17.03
Miller	42.57	39.73	17.03
Monroe	42.57	39.73	17.03
Morgan	42.57	39.73	17.03
Oglethorpe	42.57	39.73	17.03
Pike	42.57	39.73	17.03
Pulaski	42.57	39.73	17.03
Quitman	42.57	39.73	17.03
Randolph	42.57	39.73	17.03
Screven	42.57	39.73	17.03
Stephens	42.57	39.73	17.03
Sumter	42.57	39.73	17.03
Taliaferro	42.57	39.73	17.03
Taylor	42.57	39.73	17.03
Terrell	42.57	39.73	17.03
Tift	42.57	39.73	17.03
Towns	42.57	39.73	17.03
Troup	42.57	39.73	17.03
Union	42.57	39.73	17.03
Ware	42.57	39.73	17.03
Washington	42.57	39.73	17.03
Webster	42.57	39.73	17.03
White	42.57	39.73	17.03
Wilcox	42.57	39.73	17.03
Wilkinson	42.57	39.73	17.03

H A W A I I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Honolulu, HI MSA	74.20	69.26	29.68	Honolulu

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

H A W A I I continued

NONMETROPOLITAN COUNTIES	A	B	C
Hawaii	66.20	61.79	26.48
Maui	74.57	69.60	29.83
Kauai	74.57	69.60	29.83

I D A H O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boise City, ID MSA	56.43	52.66	22.57	Ada, Canyon
Pocatello, ID MSA	45.41	42.38	18.16	Bannock

NONMETROPOLITAN COUNTIES	A	B	C
Adams	44.47	41.51	17.79
Benewah	46.02	42.96	18.41
Blaine	48.83	45.57	19.53
Bonner	46.02	42.96	18.41
Boundary	46.02	42.96	18.41
Camas	47.17	44.03	18.87
Cassia	47.17	44.03	18.87
Clearwater	46.02	42.96	18.41
Elmore	44.47	41.51	17.79
Fremont	49.77	46.45	19.91
Gooding	47.17	44.03	18.87
Jefferson	49.77	46.45	19.91
Kootenai	47.63	44.45	19.05
Lemhi	49.77	46.45	19.91
Lincoln	47.17	44.03	18.87
Minidoka	47.17	44.03	18.87
Oneida	46.02	42.96	18.41
Payette	44.47	41.51	17.79
Shoshone	46.02	42.96	18.41
Twin Falls	47.17	44.03	18.87
Washington	44.47	41.51	17.79
Bear Lake	46.02	42.96	18.41
Bingham	46.02	42.96	18.41
Boise	44.47	41.51	17.79
Bonneville	49.77	46.45	19.91
Butte	49.77	46.45	19.91
Caribou	46.02	42.96	18.41
Clark	49.77	46.45	19.91
Custer	49.77	46.45	19.91
Franklin	46.02	42.96	18.41
Gem	44.47	41.51	17.79
Idaho	46.02	42.96	18.41
Jerome	47.17	44.03	18.87
Latah	46.02	42.96	18.41
Lewis	46.02	42.96	18.41
Madison	49.77	46.45	19.91
Nez Perce	46.02	42.96	18.41
Owyhee	44.47	41.51	17.79
Power	46.02	42.96	18.41
Teton	49.77	46.45	19.91
Valley	44.47	41.51	17.79

I L L I N O I S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	45.87	42.81	18.35	Mclean
Champaign-Urbana, IL MSA	46.03	42.96	18.41	Champaign
Chicago, IL	65.30	60.94	26.12	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	50.31	46.95	20.12	Henry, Rock Island

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Decatur, IL MSA	44.47	41.50	17.79	Macon
De Kalb County, IL	51.76	48.31	20.70	Dekalb
Grundy County, IL	66.61	62.16	26.64	Grundy
Kankakee, IL PMSA	44.56	41.59	17.82	Kankakee
Kendall County, Il	65.86	61.47	26.34	Kendall
Peoria-Pekin, IL MSA	51.56	48.13	20.63	Peoria, Tazewell, Woodford
Rockford, IL MSA	46.89	43.77	18.76	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	44.82	41.82	17.93	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	46.99	43.85	18.80	Menard, Sangamon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	40.94	38.20	16.37	Alexander	40.94	38.20	16.37
Bond	40.94	38.20	16.37	Brown	40.94	38.20	16.37
Bureau	43.42	40.53	17.37	Calhoun	40.94	38.20	16.37
Carroll	40.94	38.20	16.37	Cass	40.94	38.20	16.37
Christian	40.94	38.20	16.37	Clark	40.94	38.20	16.37
Clay	40.94	38.20	16.37	Coles	40.94	38.20	16.37
Crawford	40.94	38.20	16.37	Cumberland	40.94	38.20	16.37
De Witt	40.94	38.20	16.37	Douglas	40.94	38.20	16.37
Edgar	40.94	38.20	16.37	Edwards	40.94	38.20	16.37
Effingham	40.94	38.20	16.37	Fayette	40.94	38.20	16.37
Ford	40.94	38.20	16.37	Franklin	41.41	38.65	16.57
Fulton	43.42	40.53	17.37	Gallatin	40.94	38.20	16.37
Greene	40.94	38.20	16.37	Hamilton	40.94	38.20	16.37
Hancock	40.94	38.20	16.37	Hardin	40.94	38.20	16.37
Henderson	40.94	38.20	16.37	Iroquois	40.94	38.20	16.37
Jackson	41.41	38.65	16.57	Jasper	40.94	38.20	16.37
Jefferson	40.94	38.20	16.37	Jo Daviess	40.94	38.20	16.37
Johnson	40.94	38.20	16.37	Knox	41.79	39.00	16.71
La Salle	48.96	45.69	19.58	Lawrence	40.94	38.20	16.37
Lee	48.96	45.69	19.58	Livingston	40.94	38.20	16.37
Logan	40.94	38.20	16.37	Mcdonough	40.94	38.20	16.37
Macoupin	40.94	38.20	16.37	Marion	40.94	38.20	16.37
Marshall	43.42	40.53	17.37	Mason	40.94	38.20	16.37
Massac	40.94	38.20	16.37	Mercer	40.94	38.20	16.37
Montgomery	40.94	38.20	16.37	Morgan	40.94	38.20	16.37
Moultrie	40.94	38.20	16.37	Perry	40.94	38.20	16.37
Piatt	40.94	38.20	16.37	Pike	40.94	38.20	16.37
Pope	40.94	38.20	16.37	Pulaski	40.94	38.20	16.37
Putnam	43.42	40.53	17.37	Randolph	40.94	38.20	16.37

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	A	B	C
Richland	40.94	38.20	16.37
Schuyler	40.94	38.20	16.37
Shelby	40.94	38.20	16.37
Stephenson	40.94	38.20	16.37
Vermilion	40.94	38.20	16.37
Warren	40.94	38.20	16.37
Wayne	40.94	38.20	16.37
Whiteside	48.96	45.69	19.58
Saline	40.94	38.20	16.37
Scott	40.94	38.20	16.37
Stark	43.42	40.53	17.37
Union	40.94	38.20	16.37
Wabash	40.94	38.20	16.37
Washington	40.94	38.20	16.37
White	40.94	38.20	16.37
Williamson	41.41	38.65	16.57

I N D I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington, IN MSA	41.94	39.15	16.78	Monroe
Cincinnati, OH-KY-IN	46.57	43.46	18.63	Dearborn
Elkhart-Goshen, IN MSA	40.90	38.17	16.36	Elkhart
Evansville-Henderson, IN-KY MSA	40.62	37.91	16.25	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	42.32	39.51	16.93	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	51.67	48.22	20.67	Lake, Porter
Indianapolis, IN MSA	46.79	43.67	18.72	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	41.17	38.42	16.47	Howard, Tipton
Lafayette, IN MSA	45.19	42.18	18.07	Clinton, Tippecanoe
Louisville, KY-IN MSA	39.83	37.17	15.93	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	39.83	37.17	15.93	Delaware
Ohio County, IN	39.83	37.17	15.93	Ohio
South Bend, IN MSA	41.66	38.88	16.66	St. Joseph
Terre Haute, IN MSA	39.83	37.17	15.93	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	A	B	C
Bartholomew	43.15	40.27	17.26
Blackford	39.83	37.17	15.93
Carroll	39.83	37.17	15.93
Crawford	39.83	37.17	15.93
Decatur	41.69	38.91	16.68
Fayette	39.83	37.17	15.93
Franklin	39.83	37.17	15.93
Gibson	39.83	37.17	15.93
Greene	39.83	37.17	15.93
Jackson	41.69	38.91	16.68
Jay	39.83	37.17	15.93
Benton	39.83	37.17	15.93
Brown	43.15	40.27	17.26
Cass	39.83	37.17	15.93
Daviess	39.83	37.17	15.93
Dubois	39.83	37.17	15.93
Fountain	39.83	37.17	15.93
Fulton	39.83	37.17	15.93
Grant	39.83	37.17	15.93
Henry	39.83	37.17	15.93
Jasper	39.83	37.17	15.93
Jefferson	39.83	37.17	15.93

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I N D I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Jennings	41.69	38.91	16.68
Kosciusko	39.83	37.17	15.93
La Porte	41.23	38.48	16.49
Marshall	39.83	37.17	15.93
Miami	39.83	37.17	15.93
Newton	39.83	37.17	15.93
Orange	39.83	37.17	15.93
Parke	39.83	37.17	15.93
Pike	39.83	37.17	15.93
Putnam	39.92	37.26	15.97
Ripley	39.83	37.17	15.93
Spencer	39.83	37.17	15.93
Steuben	39.83	37.17	15.93
Switzerland	39.83	37.17	15.93
Wabash	39.83	37.17	15.93
Washington	40.94	38.22	16.38
White	39.83	37.17	15.93

NONMETROPOLITAN COUNTIES	A	B	C
Knox	39.83	37.17	15.93
Lagrange	39.83	37.17	15.93
Lawrence	39.83	37.17	15.93
Martin	39.83	37.17	15.93
Montgomery	39.83	37.17	15.93
Noble	39.83	37.17	15.93
Owen	40.39	37.70	16.16
Perry	39.83	37.17	15.93
Pulaski	39.83	37.17	15.93
Randolph	39.83	37.17	15.93
Rush	39.83	37.17	15.93
Starke	39.83	37.17	15.93
Sullivan	39.83	37.17	15.93
Union	39.83	37.17	15.93
Warren	39.83	37.17	15.93
Wayne	39.83	37.17	15.93

I O W A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	48.59	45.35	19.44	Linn
Davenport-Moline-Rock Island, IA-IL MSA	50.31	46.95	20.12	Scott
Des Moines, IA MSA	50.19	46.85	20.08	Dallas, Polk, Warren
Dubuque, IA MSA	44.97	41.97	17.99	Dubuque
Iowa City, IA MSA	51.16	47.75	20.46	Johnson
Omaha, NE-IA MSA	44.15	41.20	17.66	Pottawattamie
Sioux City, IA-NE MSA	43.92	40.99	17.57	Woodbury
Waterloo-Cedar Falls, IA MSA	48.78	45.52	19.51	Black Hawk

NONMETROPOLITAN COUNTIES	A	B	C
Adair	39.89	37.22	15.95
Allamakee	39.89	37.22	15.95
Audubon	39.89	37.22	15.95
Boone	42.77	39.92	17.11
Buchanan	39.89	37.22	15.95
Butler	39.89	37.22	15.95
Carroll	39.89	37.22	15.95
Cedar	42.02	39.22	16.81
Cherokee	39.89	37.22	15.95

NONMETROPOLITAN COUNTIES	A	B	C
Adams	39.89	37.22	15.95
Appanoose	39.89	37.22	15.95
Benton	39.89	37.22	15.95
Bremer	47.70	44.52	19.08
Buena Vista	39.89	37.22	15.95
Calhoun	39.89	37.22	15.95
Cass	39.89	37.22	15.95
Cerro Gordo	39.89	37.22	15.95
Chickasaw	39.89	37.22	15.95

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C
Clarke	39.89	37.22	15.95
Clayton	39.89	37.22	15.95
Crawford	39.89	37.22	15.95
Decatur	39.89	37.22	15.95
Des Moines	39.89	37.22	15.95
Emmet	39.89	37.22	15.95
Floyd	39.89	37.22	15.95
Fremont	39.89	37.22	15.95
Grundy	39.89	37.22	15.95
Hamilton	39.89	37.22	15.95
Hardin	39.89	37.22	15.95
Henry	39.89	37.22	15.95
Humboldt	39.89	37.22	15.95
Iowa	39.89	37.22	15.95
Jasper	39.89	37.22	15.95
Jones	39.89	37.22	15.95
Kossuth	39.89	37.22	15.95
Louisa	39.89	37.22	15.95
Lyon	39.89	37.22	15.95
Mahaska	39.89	37.22	15.95
Marshall	39.89	37.22	15.95
Mitchell	39.89	37.22	15.95
Monroe	39.89	37.22	15.95
Muscatine	39.89	37.22	15.95
Osceola	39.89	37.22	15.95
Palo Alto	39.89	37.22	15.95
Pocahontas	39.89	37.22	15.95
Ringgold	39.89	37.22	15.95
Shelby	39.89	37.22	15.95
Story	43.33	40.44	17.33
Taylor	39.89	37.22	15.95
Van Buren	39.89	37.22	15.95
Washington	39.89	37.22	15.95
Webster	39.89	37.22	15.95
Winneshiek	39.89	37.22	15.95
Wright	39.89	37.22	15.95

NONMETROPOLITAN COUNTIES	A	B	C
Clay	39.89	37.22	15.95
Clinton	42.02	39.22	16.81
Davis	39.89	37.22	15.95
Delaware	42.02	39.22	16.81
Dickinson	39.89	37.22	15.95
Fayette	39.89	37.22	15.95
Franklin	39.89	37.22	15.95
Greene	39.89	37.22	15.95
Guthrie	39.89	37.22	15.95
Hancock	39.89	37.22	15.95
Harrison	39.89	37.22	15.95
Howard	39.89	37.22	15.95
Ida	39.89	37.22	15.95
Jackson	42.02	39.22	16.81
Jefferson	39.89	37.22	15.95
Keokuk	39.89	37.22	15.95
Lee	39.89	37.22	15.95
Lucas	39.89	37.22	15.95
Madison	39.89	37.22	15.95
Marion	39.89	37.22	15.95
Mills	39.89	37.22	15.95
Monona	39.89	37.22	15.95
Montgomery	39.89	37.22	15.95
O'Brien	39.89	37.22	15.95
Page	39.89	37.22	15.95
Plymouth	39.89	37.22	15.95
Poweshiek	39.89	37.22	15.95
Sac	39.89	37.22	15.95
Sioux	39.89	37.22	15.95
Tama	39.89	37.22	15.95
Union	39.89	37.22	15.95
Wapello	41.93	39.13	16.77
Wayne	39.89	37.22	15.95
Winnebago	39.89	37.22	15.95
Worth	39.89	37.22	15.95

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	43.57	40.66	17.43	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	47.73	44.55	19.09	Douglas
Topeka, KS MSA	43.20	40.32	17.28	Shawnee
Wichita, KS MSA	46.53	43.42	18.61	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Allen	38.25	35.70	15.30	Anderson	38.25	35.70	15.30
Atchison	38.25	35.70	15.30	Barber	38.25	35.70	15.30
Barton	38.25	35.70	15.30	Bourbon	38.25	35.70	15.30
Brown	38.25	35.70	15.30	Chase	38.25	35.70	15.30
Chautauqua	38.25	35.70	15.30	Cherokee	38.25	35.70	15.30
Cheyenne	38.25	35.70	15.30	Clark	38.25	35.70	15.30
Clay	38.25	35.70	15.30	Cloud	38.25	35.70	15.30
Coffey	38.25	35.70	15.30	Comanche	38.25	35.70	15.30
Cowley	38.25	35.70	15.30	Crawford	38.25	35.70	15.30
Decatur	38.25	35.70	15.30	Dickinson	38.25	35.70	15.30
Doniphan	38.25	35.70	15.30	Edwards	38.25	35.70	15.30
Elk	38.25	35.70	15.30	Ellis	38.25	35.70	15.30
Ellsworth	38.25	35.70	15.30	Finney	38.25	35.70	15.30
Ford	38.25	35.70	15.30	Franklin	38.25	35.70	15.30
Geary	38.25	35.70	15.30	Gove	38.25	35.70	15.30
Graham	38.25	35.70	15.30	Grant	38.25	35.70	15.30
Gray	38.25	35.70	15.30	Greeley	38.25	35.70	15.30
Greenwood	38.25	35.70	15.30	Hamilton	38.25	35.70	15.30
Harper	38.25	35.70	15.30	Haskell	38.25	35.70	15.30
Hodgeman	38.25	35.70	15.30	Jackson	38.25	35.70	15.30
Jefferson	38.25	35.70	15.30	Jewell	38.25	35.70	15.30
Kearny	38.25	35.70	15.30	Kingman	38.25	35.70	15.30
Kiowa	38.25	35.70	15.30	Labette	38.25	35.70	15.30
Lane	38.25	35.70	15.30	Lincoln	38.25	35.70	15.30
Linn	38.25	35.70	15.30	Logan	38.25	35.70	15.30
Lyon	38.25	35.70	15.30	Mcpherson	38.25	35.70	15.30
Marion	38.25	35.70	15.30	Marshall	38.25	35.70	15.30
Meade	38.25	35.70	15.30	Mitchell	38.25	35.70	15.30
Montgomery	38.25	35.70	15.30	Morris	38.25	35.70	15.30
Morton	38.25	35.70	15.30	Nemaha	38.25	35.70	15.30
Neosho	38.25	35.70	15.30	Ness	38.25	35.70	15.30
Norton	38.25	35.70	15.30	Osage	38.25	35.70	15.30
Osborne	38.25	35.70	15.30	Ottawa	38.25	35.70	15.30
Pawnee	38.25	35.70	15.30	Phillips	38.25	35.70	15.30

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Pottawatomie	38.25	35.70	15.30
Rawlins	38.25	35.70	15.30
Republic	38.25	35.70	15.30
Riley	38.25	35.70	15.30
Rush	38.25	35.70	15.30
Saline	38.25	35.70	15.30
Seward	38.25	35.70	15.30
Sherman	38.25	35.70	15.30
Stafford	38.25	35.70	15.30
Stevens	38.25	35.70	15.30
Thomas	38.25	35.70	15.30
Wabaunsee	38.25	35.70	15.30
Washington	38.25	35.70	15.30
Wilson	38.25	35.70	15.30

NONMETROPOLITAN COUNTIES	A	B	C
Pratt	38.25	35.70	15.30
Reno	38.25	35.70	15.30
Rice	38.25	35.70	15.30
Rooks	38.25	35.70	15.30
Russell	38.25	35.70	15.30
Scott	38.25	35.70	15.30
Sheridan	38.25	35.70	15.30
Smith	38.25	35.70	15.30
Stanton	38.25	35.70	15.30
Sumner	38.25	35.70	15.30
Trego	38.25	35.70	15.30
Wallace	38.25	35.70	15.30
Wichita	38.25	35.70	15.30
Woodson	38.25	35.70	15.30

K E N T U C K Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	46.57	43.46	18.63	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	45.21	42.19	18.08	Christian
Evansville-Henderson, IN-KY MSA	40.62	37.91	16.25	Henderson
Gallatin County, KY	36.46	34.02	14.58	Gallatin
Grant County, KY	36.46	34.02	14.58	Grant
Huntington-Ashland, WV-KY-OH MSA	40.60	37.89	16.24	Boyd, Carter, Greenup
Lexington, KY MSA	40.37	37.67	16.15	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	39.83	37.17	15.93	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	36.46	34.02	14.58	Daviess
Pendleton County, KY	36.46	34.02	14.58	Pendleton

NONMETROPOLITAN COUNTIES	A	B	C
Adair	36.34	33.91	14.54
Anderson	37.01	34.54	14.81
Barren	36.34	33.91	14.54
Bell	36.34	33.91	14.54
Bracken	36.34	33.91	14.54
Breckinridge	36.34	33.91	14.54
Caldwell	36.34	33.91	14.54
Carlisle	36.34	33.91	14.54
Casey	36.34	33.91	14.54
Clinton	36.34	33.91	14.54

NONMETROPOLITAN COUNTIES	A	B	C
Allen	36.34	33.91	14.54
Ballard	36.34	33.91	14.54
Bath	36.34	33.91	14.54
Boyle	36.34	33.91	14.54
Breathitt	36.34	33.91	14.54
Butler	36.34	33.91	14.54
Calloway	36.34	33.91	14.54
Carroll	36.34	33.91	14.54
Clay	36.34	33.91	14.54
Crittenden	36.34	33.91	14.54

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C
Cumberland	36.34	33.91	14.54
Elliott	36.34	33.91	14.54
Fleming	36.34	33.91	14.54
Franklin	37.01	34.54	14.81
Garrard	36.34	33.91	14.54
Grayson	36.34	33.91	14.54
Hancock	36.34	33.91	14.54
Harlan	36.34	33.91	14.54
Hart	36.34	33.91	14.54
Hickman	36.34	33.91	14.54
Jackson	36.34	33.91	14.54
Knott	36.34	33.91	14.54
Larue	36.34	33.91	14.54
Lawrence	36.34	33.91	14.54
Leslie	36.34	33.91	14.54
Lewis	36.34	33.91	14.54
Livingston	36.34	33.91	14.54
Lyon	36.34	33.91	14.54
Mccreary	36.34	33.91	14.54
Magoffin	36.34	33.91	14.54
Marshall	36.34	33.91	14.54
Mason	36.34	33.91	14.54
Menifee	36.34	33.91	14.54
Metcalfe	36.34	33.91	14.54
Montgomery	36.34	33.91	14.54
Muhlenberg	36.34	33.91	14.54
Nicholas	36.34	33.91	14.54
Owen	36.34	33.91	14.54
Perry	36.34	33.91	14.54
Powell	36.34	33.91	14.54
Robertson	36.34	33.91	14.54
Rowan	36.34	33.91	14.54
Shelby	36.34	33.91	14.54
Spencer	36.34	33.91	14.54
Todd	36.34	33.91	14.54
Trimble	36.34	33.91	14.54
Warren	36.34	33.91	14.54
Wayne	36.34	33.91	14.54
Whitley	36.34	33.91	14.54

NONMETROPOLITAN COUNTIES	A	B	C
Edmonson	36.34	33.91	14.54
Estill	36.34	33.91	14.54
Floyd	36.34	33.91	14.54
Fulton	36.34	33.91	14.54
Graves	36.34	33.91	14.54
Green	36.34	33.91	14.54
Hardin	36.34	33.91	14.54
Harrison	36.34	33.91	14.54
Henry	36.34	33.91	14.54
Hopkins	36.34	33.91	14.54
Johnson	36.34	33.91	14.54
Knox	36.34	33.91	14.54
Laurel	36.34	33.91	14.54
Lee	36.34	33.91	14.54
Letcher	36.34	33.91	14.54
Lincoln	36.34	33.91	14.54
Logan	36.34	33.91	14.54
Mccracken	36.34	33.91	14.54
Mclean	36.34	33.91	14.54
Marion	36.34	33.91	14.54
Martin	36.34	33.91	14.54
Meade	36.34	33.91	14.54
Mercer	37.01	34.54	14.81
Monroe	36.34	33.91	14.54
Morgan	36.34	33.91	14.54
Nelson	36.34	33.91	14.54
Ohio	36.34	33.91	14.54
Owsley	36.34	33.91	14.54
Pike	36.34	33.91	14.54
Pulaski	36.34	33.91	14.54
Rockcastle	36.34	33.91	14.54
Russell	36.34	33.91	14.54
Simpson	36.34	33.91	14.54
Taylor	36.34	33.91	14.54
Trigg	36.34	33.91	14.54
Union	36.34	33.91	14.54
Washington	36.34	33.91	14.54
Webster	36.34	33.91	14.54
Wolfe	36.34	33.91	14.54

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

L O U I S I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Alexandria, LA MSA	40.48	37.77	16.19	Rapides
Baton Rouge, LA MSA	47.66	44.48	19.06	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	42.26	39.45	16.91	Lafourche, Terrebonne
Lafayette, LA MSA	40.48	37.77	16.19	Acadia, Lafayette, St. Landry, St. Martin
Lake Charles, LA MSA	40.48	37.77	16.19	Calcasieu
Monroe, LA MSA	40.48	37.77	16.19	Ouachita
New Orleans, LA	44.14	41.19	17.66	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	40.48	37.77	16.19	St. James
Shreveport-Bossier City, LA MSA	43.21	40.33	17.28	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Allen	39.67	37.02	15.87	Assumption	39.67	37.02	15.87
Avoyelles	39.67	37.02	15.87	Beauregard	39.67	37.02	15.87
Bienville	39.67	37.02	15.87	Caldwell	39.67	37.02	15.87
Cameron	39.67	37.02	15.87	Catahoula	39.67	37.02	15.87
Claiborne	39.67	37.02	15.87	Concordia	39.67	37.02	15.87
De Soto	39.67	37.02	15.87	East Carroll	39.67	37.02	15.87
East Feliciana	39.67	37.02	15.87	Evangeline	39.67	37.02	15.87
Franklin	39.67	37.02	15.87	Grant	39.67	37.02	15.87
Iberia	39.67	37.02	15.87	Iberville	39.67	37.02	15.87
Jackson	39.67	37.02	15.87	Jefferson Davis	39.67	37.02	15.87
La Salle	39.67	37.02	15.87	Lincoln	39.67	37.02	15.87
Madison	39.67	37.02	15.87	Morehouse	39.67	37.02	15.87
Natchitoches	39.67	37.02	15.87	Pointe Coupee	39.67	37.02	15.87
Red River	39.67	37.02	15.87	Richland	39.67	37.02	15.87
Sabine	39.67	37.02	15.87	St. Helena	39.67	37.02	15.87
St. Mary	39.67	37.02	15.87	Tangipahoa	39.67	37.02	15.87
Tensas	39.67	37.02	15.87	Union	39.67	37.02	15.87
Vermilion	39.67	37.02	15.87	Vernon	39.67	37.02	15.87
Washington	39.67	37.02	15.87	West Carroll	39.67	37.02	15.87
West Feliciana	39.67	37.02	15.87	Winn	39.67	37.02	15.87

M A I N E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bangor, ME MSA	47.07	43.93	18.83	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A I N E continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	46.37	43.27	18.55	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	64.81	60.48	25.92	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	57.46	53.64	22.99	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Androscoggin	42.18	39.37	16.87	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	42.60	39.76	17.04	
Cumberland	48.78	45.53	19.51	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	41.81	39.02	16.72	
Hancock	43.73	40.82	17.49	
Kennebec	44.78	41.79	17.91	
Knox	44.72	41.74	17.89	
Lincoln	43.99	41.07	17.60	
Oxford	41.81	39.02	16.72	
Penobscot	43.21	40.32	17.28	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A I N E continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Piscataquis	37.53	35.03	15.01	
Sagadahoc	51.14	47.72	20.45	
Somerset	42.50	39.68	17.00	
Waldo	43.21	40.32	17.28	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	43.21	40.32	17.28	
York	56.13	52.38	22.45	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Baltimore, MD	51.03	47.62	20.41	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	67.44	62.94	26.98	Columbia
Cumberland, MD-WV MSA	40.07	37.39	16.03	Allegany
Hagerstown, MD PMSA	40.03	37.36	16.01	Washington
Washington, DC-MD-VA	74.19	69.25	29.67	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	55.15	51.02	21.87	Cecil

NONMETROPOLITAN COUNTIES	A	B	C
Caroline	39.17	36.56	15.67
Garrett	38.38	35.81	15.35
St. Mary's	57.74	53.89	23.10
Talbot	47.05	43.91	18.82
Worcester	42.14	39.32	16.85
Dorchester	40.88	38.15	16.35
Kent	43.06	40.18	17.22
Somerset	40.88	38.15	16.35
Wicomico	48.59	45.35	19.43

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	73.03	68.17	29.21	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	72.86	68.00	29.14	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	60.61	56.57	24.24	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Hanson town, Lakeville town, Middleborough town
				Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA.....	61.06	56.99	24.43	Middlesex county towns of Ashby town
				Worcester county towns of Ashburnham town, Fitchburg city
				Gardner city, Leominster city, Lunenburg town
				Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA.....	58.54	54.64	23.41	Essex county towns of Andover town, Boxford town
				Georgetown town, Groveland town, Haverhill city
				Lawrence city, Merrimac town, Methuen town
				North Andover town, West Newbury town
Lowell, MA-NH PMSA.....	61.15	57.07	24.46	Middlesex county towns of Billerica town, Chelmsford town
				Dracut town, Dunstable town, Groton town, Lowell city
				Pepperell town, Tewksbury town, Tyngsborough town
				Westford town
New Bedford, MA PMSA.....	52.86	49.34	21.14	Bristol county towns of Acushnet town, Dartmouth town
				Fairhaven town, Freetown town, New Bedford city
				Plymouth county towns of Marion town, Mattapoisett town
				Rochester town
Pittsfield, MA MSA.....	55.92	52.20	22.37	Berkshire county towns of Adams town, Cheshire town
				Dalton town, Hinsdale town, Lanesborough town, Lee town
				Lenox town, Pittsfield city, Richmond town
				Stockbridge town
Providence-Fall River-Warwick, RI-MA MSA.....	65.96	61.56	26.39	Bristol county towns of Attleboro city, Fall River city
				North Attleborough, Rehoboth town, Seekonk town
				Somerset town, Swansea town, Westport town
Springfield, MA MSA.....	54.76	51.10	21.90	Franklin county towns of Sunderland town
				Hampden county towns of Agawam town, Chicopee city
				East Longmeadow to, Hampden town, Holyoke city
				Longmeadow town, Ludlow town, Monson town
				Montgomery town, Palmer town, Russell town
				Southwick town, Springfield city, Westfield city
				West Springfield t, Wilbraham town
				Hampshire county towns of Amherst town, Belchertown town
				Easthampton town, Granby town, Hadley town
				Hatfield town, Huntington town, Northampton city
				Southampton town, South Hadley town, Ware town
				Williamsburg town
Worcester, MA-CT PMSA.....	60.95	56.89	24.38	Hampden county towns of Holland town
				Worcester county towns of Auburn town, Barre town
				Boylston town, Brookfield town, Charlton town
				Clinton town, Douglas town, Dudley town
				East Brookfield to, Grafton town, Holden town
				Leicester town, Millbury town, Northborough town
				Northbridge town, North Brookfield t, Oakham town
				Oxford town, Paxton town, Princeton town, Rutland town
				Shrewsbury town, Southbridge town, Spencer town
				Sterling town, Sturbridge town, Sutton town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Barnstable	73.64	68.74	29.46	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	49.67	46.36	19.87	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	73.64	68.74	29.46	
Franklin	55.93	52.21	22.37	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	53.76	50.18	21.51	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	67.47	62.97	26.99	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	73.64	68.74	29.46	
Worcester	55.11	51.45	22.05	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	57.40	53.57	22.96	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	41.99	39.19	16.80	Berrien
Detroit, MI PMSA	48.17	44.96	19.27	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	41.46	38.69	16.58	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	45.47	42.44	18.19	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	41.63	38.86	16.65	Jackson
Kalamazoo-Battle Creek, MI MSA	43.41	40.53	17.37	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	46.19	43.10	18.47	Clinton, Eaton, Ingham

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I C H I G A N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	41.18	38.44	16.47	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alcona	39.48	36.84	15.79	Alger	39.48	36.84	15.79
Alpena	39.48	36.84	15.79	Antrim	42.33	39.51	16.93
Arenac	39.48	36.84	15.79	Baraga	39.48	36.84	15.79
Barry	41.14	38.40	16.46	Benzie	42.33	39.51	16.93
Branch	39.75	37.09	15.90	Cass	39.48	36.84	15.79
Charlevoix	42.33	39.51	16.93	Cheboygan	39.48	36.84	15.79
Chippewa	39.48	36.84	15.79	Clare	39.48	36.84	15.79
Crawford	39.48	36.84	15.79	Delta	39.48	36.84	15.79
Dickinson	39.48	36.84	15.79	Emmet	42.33	39.51	16.93
Gladwin	39.48	36.84	15.79	Gogebic	39.48	36.84	15.79
Grand Traverse	43.82	40.89	17.53	Gratiot	42.60	39.77	17.04
Hillsdale	42.14	39.34	16.86	Houghton	39.48	36.84	15.79
Huron	39.48	36.84	15.79	Ionia	39.57	36.93	15.83
Iosco	39.48	36.84	15.79	Iron	39.48	36.84	15.79
Isabella	42.60	39.77	17.04	Kalkaska	42.33	39.51	16.93
Keweenaw	39.48	36.84	15.79	Lake	39.48	36.84	15.79
Leelanau	43.53	40.63	17.41	Luce	39.48	36.84	15.79
Mackinac	39.48	36.84	15.79	Manistee	42.33	39.51	16.93
Marquette	42.33	39.51	16.93	Mason	39.48	36.84	15.79
Mecosta	39.48	36.84	15.79	Menominee	42.33	39.51	16.93
Missaukee	42.33	39.51	16.93	Montcalm	39.48	36.84	15.79
Montmorency	39.48	36.84	15.79	Newaygo	39.48	36.84	15.79
Oceana	39.48	36.84	15.79	Ogemaw	39.48	36.84	15.79
Ontonagon	39.48	36.84	15.79	Osceola	39.48	36.84	15.79
Oscoda	39.48	36.84	15.79	Otsego	39.48	36.84	15.79
Presque Isle	39.48	36.84	15.79	Roscommon	39.48	36.84	15.79
St. Joseph	39.75	37.09	15.90	Sanilac	39.48	36.84	15.79
Schoolcraft	39.48	36.84	15.79	Shiawassee	42.05	39.25	16.82
Tuscola	39.61	36.97	15.84	Wexford	42.33	39.51	16.93

M I N N E S O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	42.51	39.67	17.00	St. Louis
Fargo-Moorhead, ND-MN MSA	44.09	41.15	17.64	Clay
Grand Forks, ND-MN MSA	42.14	39.34	16.86	Polk

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	46.53	43.42	18.61	Houston
Minneapolis-St. Paul, MN-WI MSA	57.47	53.64	22.99	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	47.58	44.42	19.03	Olmsted
St. Cloud, MN MSA	43.78	40.86	17.51	Benton, Stearns

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Aitkin	40.32	37.64	16.13	Becker	39.05	36.44	15.62
Beltrami	39.05	36.44	15.62	Big Stone	39.05	36.44	15.62
Blue Earth	42.70	39.86	17.08	Brown	39.05	36.44	15.62
Carlton	39.05	36.44	15.62	Cass	39.05	36.44	15.62
Chippewa	39.05	36.44	15.62	Clearwater	39.05	36.44	15.62
Cook	39.05	36.44	15.62	Cottonwood	39.05	36.44	15.62
Crow Wing	39.05	36.44	15.62	Dodge	39.05	36.44	15.62
Douglas	39.05	36.44	15.62	Faribault	39.05	36.44	15.62
Fillmore	39.05	36.44	15.62	Freeborn	42.60	39.77	17.04
Goodhue	39.05	36.44	15.62	Grant	39.05	36.44	15.62
Hubbard	39.05	36.44	15.62	Itasca	39.05	36.44	15.62
Jackson	39.05	36.44	15.62	Kanabec	39.05	36.44	15.62
Kandiyohi	40.97	38.24	16.39	Kittson	39.05	36.44	15.62
Koochiching	39.05	36.44	15.62	Lac qui Parle	39.05	36.44	15.62
Lake	39.05	36.44	15.62	Lake of the Woods	39.05	36.44	15.62
Le Sueur	40.60	37.90	16.24	Lincoln	39.05	36.44	15.62
Lyon	39.05	36.44	15.62	Mcleod	40.97	38.24	16.39
Mahnomen	39.05	36.44	15.62	Marshall	39.05	36.44	15.62
Martin	39.05	36.44	15.62	Meeker	40.97	38.24	16.39
Mille Lacs	39.05	36.44	15.62	Morrison	39.05	36.44	15.62
Mower	39.05	36.44	15.62	Murray	39.05	36.44	15.62
Nicollet	41.15	38.40	16.46	Nobles	39.05	36.44	15.62
Norman	39.05	36.44	15.62	Otter Tail	39.05	36.44	15.62
Pennington	39.05	36.44	15.62	Pine	39.05	36.44	15.62
Pipestone	39.05	36.44	15.62	Pope	39.05	36.44	15.62
Red Lake	39.05	36.44	15.62	Redwood	39.05	36.44	15.62
Renville	40.97	38.24	16.39	Rice	43.88	40.96	17.55
Rock	39.05	36.44	15.62	Roseau	39.05	36.44	15.62
Sibley	40.60	37.90	16.24	Steele	42.60	39.77	17.04
Stevens	39.05	36.44	15.62	Swift	39.05	36.44	15.62
Todd	39.05	36.44	15.62	Traverse	39.05	36.44	15.62
Wabasha	39.05	36.44	15.62	Wadena	39.05	36.44	15.62
Waseca	39.05	36.44	15.62	Watonwan	39.05	36.44	15.62

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Wilkin	39.05	36.44	15.62
Yellow Medicine	39.05	36.44	15.62
Winona	39.60	36.96	15.84

M I S S I S S I P P I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	41.21	38.46	16.48	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	41.21	38.46	16.48	Forrest, Lamar
Jackson, MS MSA	48.17	44.96	19.27	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	44.62	41.65	17.85	Desoto

NONMETROPOLITAN COUNTIES	A	B	C
Adams	41.21	38.46	16.48
Amite	41.21	38.46	16.48
Benton	41.21	38.46	16.48
Calhoun	41.21	38.46	16.48
Chickasaw	41.21	38.46	16.48
Claiborne	41.21	38.46	16.48
Clay	41.21	38.46	16.48
Copiah	41.21	38.46	16.48
Franklin	41.21	38.46	16.48
Greene	41.21	38.46	16.48
Holmes	41.21	38.46	16.48
Issaquena	41.21	38.46	16.48
Jasper	41.21	38.46	16.48
Jefferson Davis	41.21	38.46	16.48
Kemper	41.21	38.46	16.48
Lauderdale	41.21	38.46	16.48
Leake	41.21	38.46	16.48
Leflore	41.21	38.46	16.48
Lowndes	41.21	38.46	16.48
Marshall	41.21	38.46	16.48
Montgomery	41.21	38.46	16.48
Newton	41.21	38.46	16.48
Oktibbeha	41.21	38.46	16.48
Pearl River	41.21	38.46	16.48
Pike	41.21	38.46	16.48
Prentiss	41.21	38.46	16.48
Scott	41.21	38.46	16.48
Simpson	41.21	38.46	16.48

NONMETROPOLITAN COUNTIES	A	B	C
Alcorn	41.21	38.46	16.48
Attala	41.21	38.46	16.48
Bolivar	41.21	38.46	16.48
Carroll	41.21	38.46	16.48
Choctaw	41.21	38.46	16.48
Clarke	41.21	38.46	16.48
Coahoma	41.21	38.46	16.48
Covington	41.21	38.46	16.48
George	41.21	38.46	16.48
Grenada	41.21	38.46	16.48
Humphreys	41.21	38.46	16.48
Itawamba	41.21	38.46	16.48
Jefferson	41.21	38.46	16.48
Jones	41.21	38.46	16.48
Lafayette	41.21	38.46	16.48
Lawrence	41.21	38.46	16.48
Lee	41.21	38.46	16.48
Lincoln	41.21	38.46	16.48
Marion	41.21	38.46	16.48
Monroe	41.21	38.46	16.48
Neshoba	41.21	38.46	16.48
Noxubee	41.21	38.46	16.48
Panola	41.21	38.46	16.48
Perry	41.21	38.46	16.48
Pontotoc	41.21	38.46	16.48
Quitman	41.21	38.46	16.48
Sharkey	41.21	38.46	16.48
Smith	41.21	38.46	16.48

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	A	B	C
Stone	41.21	38.46	16.48
Tallahatchie	41.21	38.46	16.48
Tippah	41.21	38.46	16.48
Tunica	41.21	38.46	16.48
Walthall	41.21	38.46	16.48
Washington	41.21	38.46	16.48
Webster	41.21	38.46	16.48
Winston	41.21	38.46	16.48
Yazoo	41.21	38.46	16.48

NONMETROPOLITAN COUNTIES	A	B	C
Sunflower	41.21	38.46	16.48
Tate	41.21	38.46	16.48
Tishomingo	41.21	38.46	16.48
Union	41.21	38.46	16.48
Warren	41.21	38.46	16.48
Wayne	41.21	38.46	16.48
Wilkinson	41.21	38.46	16.48
Yalobusha	41.21	38.46	16.48

M I S S O U R I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Columbia, MO MSA	41.09	38.34	16.44	Boone
Joplin, MO MSA	41.09	38.34	16.44	Jasper, Newton
Kansas City, MO-KS MSA	43.57	40.66	17.43	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	41.09	38.34	16.44	Andrew, Buchanan
St. Louis, MO-IL MSA	44.82	41.82	17.93	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	41.09	38.34	16.44	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	A	B	C
Adair	41.09	38.34	16.44
Audrain	41.09	38.34	16.44
Barton	41.09	38.34	16.44
Benton	41.09	38.34	16.44
Butler	41.09	38.34	16.44
Callaway	41.09	38.34	16.44
Cape Girardeau	41.09	38.34	16.44
Carter	41.09	38.34	16.44
Chariton	41.09	38.34	16.44
Cole	41.09	38.34	16.44
Crawford	41.09	38.34	16.44
Dallas	41.09	38.34	16.44
Dekalb	41.09	38.34	16.44
Douglas	41.09	38.34	16.44
Gasconade	41.09	38.34	16.44
Grundy	41.09	38.34	16.44
Henry	41.09	38.34	16.44
Holt	41.09	38.34	16.44
Howell	41.09	38.34	16.44

NONMETROPOLITAN COUNTIES	A	B	C
Atchison	41.09	38.34	16.44
Barry	41.09	38.34	16.44
Bates	41.09	38.34	16.44
Bollinger	41.09	38.34	16.44
Caldwell	41.09	38.34	16.44
Camden	41.09	38.34	16.44
Carroll	41.09	38.34	16.44
Cedar	41.09	38.34	16.44
Clark	41.09	38.34	16.44
Cooper	41.09	38.34	16.44
Dade	41.09	38.34	16.44
Daviess	41.09	38.34	16.44
Dent	41.09	38.34	16.44
Dunklin	41.09	38.34	16.44
Gentry	41.09	38.34	16.44
Harrison	41.09	38.34	16.44
Hickory	41.09	38.34	16.44
Howard	41.09	38.34	16.44
Iron	41.09	38.34	16.44

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	A	B	C
Johnson	41.09	38.34	16.44
Laclede	41.09	38.34	16.44
Lewis	41.09	38.34	16.44
Livingston	41.09	38.34	16.44
Macon	41.09	38.34	16.44
Maries	41.09	38.34	16.44
Mercer	41.09	38.34	16.44
Mississippi	41.09	38.34	16.44
Monroe	41.09	38.34	16.44
Morgan	41.09	38.34	16.44
Nodaway	41.09	38.34	16.44
Osage	41.09	38.34	16.44
Pemiscot	41.09	38.34	16.44
Pettis	41.09	38.34	16.44
Pike	41.09	38.34	16.44
Pulaski	41.09	38.34	16.44
Ralls	41.09	38.34	16.44
Reynolds	41.09	38.34	16.44
St. Clair	41.09	38.34	16.44
St. Francois	41.09	38.34	16.44
Schuyler	41.09	38.34	16.44
Scott	41.09	38.34	16.44
Shelby	41.09	38.34	16.44
Stone	41.09	38.34	16.44
Taney	41.09	38.34	16.44
Vernon	41.09	38.34	16.44
Wayne	41.09	38.34	16.44
Wright	41.09	38.34	16.44

NONMETROPOLITAN COUNTIES	A	B	C
Knox	41.09	38.34	16.44
Lawrence	41.09	38.34	16.44
Linn	41.09	38.34	16.44
Mcdonald	41.09	38.34	16.44
Madison	41.09	38.34	16.44
Marion	41.09	38.34	16.44
Miller	41.09	38.34	16.44
Moniteau	41.09	38.34	16.44
Montgomery	41.09	38.34	16.44
New Madrid	41.09	38.34	16.44
Oregon	41.09	38.34	16.44
Ozark	41.09	38.34	16.44
Perry	41.09	38.34	16.44
Phelps	41.09	38.34	16.44
Polk	41.09	38.34	16.44
Putnam	41.09	38.34	16.44
Randolph	41.09	38.34	16.44
Ripley	41.09	38.34	16.44
Ste. Genevieve	41.09	38.34	16.44
Saline	41.09	38.34	16.44
Scotland	41.09	38.34	16.44
Shannon	41.09	38.34	16.44
Stoddard	41.09	38.34	16.44
Sullivan	41.09	38.34	16.44
Texas	41.09	38.34	16.44
Washington	41.09	38.34	16.44
Worth	41.09	38.34	16.44

M O N T A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Billings, MT MSA	51.50	48.06	20.60	Yellowstone
Great Falls, MT MSA	45.60	42.57	18.24	Cascade
Missoula, MT MSA	46.35	43.26	18.54	Missoula

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M O N T A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beaverhead	43.59	40.68	17.44
Blaine	40.53	37.83	16.21
Carbon	41.07	38.34	16.43
Chouteau	40.53	37.83	16.21
Daniels	40.53	37.83	16.21
Deer Lodge	43.59	40.68	17.44
Fergus	41.07	38.34	16.43
Gallatin	48.90	45.64	19.56
Glacier	40.53	37.83	16.21
Granite	43.59	40.68	17.44
Jefferson	43.59	40.68	17.44
Lake	44.49	41.52	17.80
Liberty	40.53	37.83	16.21
Mccone	41.07	38.34	16.43
Meagher	43.59	40.68	17.44
Musselshell	41.07	38.34	16.43
Petroleum	41.07	38.34	16.43
Pondera	40.53	37.83	16.21
Powell	43.59	40.68	17.44
Ravalli	44.49	41.52	17.80
Roosevelt	40.53	37.83	16.21
Sanders	44.49	41.52	17.80
Silver Bow	43.59	40.68	17.44
Sweet Grass	41.07	38.34	16.43
Toole	40.53	37.83	16.21
Valley	40.53	37.83	16.21
Wibaux	41.07	38.34	16.43

NONMETROPOLITAN COUNTIES	A	B	C
Big Horn	41.07	38.34	16.43
Broadwater	43.59	40.68	17.44
Carter	41.07	38.34	16.43
Custer	41.07	38.34	16.43
Dawson	41.07	38.34	16.43
Fallon	41.07	38.34	16.43
Flathead	44.49	41.52	17.80
Garfield	41.07	38.34	16.43
Golden Valley	41.07	38.34	16.43
Hill	40.53	37.83	16.21
Judith Basin	41.07	38.34	16.43
Lewis and Clark	50.69	47.32	20.28
Lincoln	44.49	41.52	17.80
Madison	43.59	40.68	17.44
Mineral	44.49	41.52	17.80
Park	43.59	40.68	17.44
Phillips	40.53	37.83	16.21
Powder River	41.07	38.34	16.43
Prairie	41.07	38.34	16.43
Richland	41.07	38.34	16.43
Rosebud	41.07	38.34	16.43
Sheridan	40.53	37.83	16.21
Stillwater	41.07	38.34	16.43
Teton	40.53	37.83	16.21
Treasure	41.07	38.34	16.43
Wheatland	41.07	38.34	16.43

N E B R A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Lincoln, NE MSA	43.57	40.66	17.43	Lancaster
Omaha, NE-IA MSA	44.15	41.20	17.66	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	43.92	40.99	17.57	Dakota

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	40.32	37.63	16.13
Arthur	40.32	37.63	16.13
Blaine	40.32	37.63	16.13
Box Butte	40.32	37.63	16.13
Brown	40.32	37.63	16.13
Burt	40.32	37.63	16.13
Cedar	40.32	37.63	16.13
Cherry	40.32	37.63	16.13
Clay	40.32	37.63	16.13
Cuming	40.32	37.63	16.13
Dawes	40.32	37.63	16.13
Deuel	40.32	37.63	16.13
Dodge	40.32	37.63	16.13
Fillmore	40.32	37.63	16.13
Frontier	40.32	37.63	16.13
Gage	40.32	37.63	16.13
Garfield	40.32	37.63	16.13
Grant	40.32	37.63	16.13
Hall	40.32	37.63	16.13
Harlan	40.32	37.63	16.13
Hitchcock	40.32	37.63	16.13
Hooker	40.32	37.63	16.13
Jefferson	40.32	37.63	16.13
Kearney	40.32	37.63	16.13
Keya Paha	40.32	37.63	16.13
Knox	40.32	37.63	16.13
Logan	40.32	37.63	16.13
Mcpherson	40.32	37.63	16.13
Merrick	40.32	37.63	16.13
Nance	40.32	37.63	16.13
Nuckolls	40.32	37.63	16.13
Pawnee	40.32	37.63	16.13
Phelps	40.32	37.63	16.13
Platte	40.32	37.63	16.13
Red Willow	40.32	37.63	16.13
Rock	40.32	37.63	16.13
Saunders	40.32	37.63	16.13
Seward	40.32	37.63	16.13
Sherman	40.32	37.63	16.13
Stanton	40.32	37.63	16.13

NONMETROPOLITAN COUNTIES	A	B	C
Antelope	40.32	37.63	16.13
Banner	40.32	37.63	16.13
Boone	40.32	37.63	16.13
Boyd	40.32	37.63	16.13
Buffalo	40.32	37.63	16.13
Butler	40.32	37.63	16.13
Chase	40.32	37.63	16.13
Cheyenne	40.32	37.63	16.13
Colfax	40.32	37.63	16.13
Custer	40.32	37.63	16.13
Dawson	40.32	37.63	16.13
Dixon	40.32	37.63	16.13
Dundy	40.32	37.63	16.13
Franklin	40.32	37.63	16.13
Furnas	40.32	37.63	16.13
Garden	40.32	37.63	16.13
Gosper	40.32	37.63	16.13
Greeley	40.32	37.63	16.13
Hamilton	40.32	37.63	16.13
Hayes	40.32	37.63	16.13
Holt	40.32	37.63	16.13
Howard	40.32	37.63	16.13
Johnson	40.32	37.63	16.13
Keith	40.32	37.63	16.13
Kimball	40.32	37.63	16.13
Lincoln	40.32	37.63	16.13
Loup	40.32	37.63	16.13
Madison	40.32	37.63	16.13
Morrill	40.32	37.63	16.13
Nemaha	40.32	37.63	16.13
Otoe	40.32	37.63	16.13
Perkins	40.32	37.63	16.13
Pierce	40.32	37.63	16.13
Polk	40.32	37.63	16.13
Richardson	40.32	37.63	16.13
Saline	40.32	37.63	16.13
Scotts Bluff	40.32	37.63	16.13
Sheridan	40.32	37.63	16.13
Sioux	40.32	37.63	16.13
Thayer	40.32	37.63	16.13

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C
Thomas	40.32	37.63	16.13
Valley	40.32	37.63	16.13
Webster	40.32	37.63	16.13
York	40.32	37.63	16.13
Thurston	40.32	37.63	16.13
Wayne	40.32	37.63	16.13
Wheeler	40.32	37.63	16.13

N E V A D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	64.28	60.01	25.71	Clark, Nye
Reno, NV MSA	55.69	51.98	22.28	Washoe

NONMETROPOLITAN COUNTIES	A	B	C
Churchill	55.50	51.80	22.20
Elko	55.50	51.80	22.20
Eureka	55.50	51.80	22.20
Lander	55.50	51.80	22.20
Lyon	55.50	51.80	22.20
Pershing	55.50	51.80	22.20
White Pine	55.50	51.80	22.20
Douglas	57.44	53.62	22.98
Esmeralda	55.50	51.80	22.20
Humboldt	55.50	51.80	22.20
Lincoln	55.50	51.80	22.20
Mineral	55.50	51.80	22.20
Storey	55.50	51.80	22.20
Carson City	55.50	51.80	22.20

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	72.86	68.00	29.14	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	58.54	54.64	23.41	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	61.15	57.07	24.46	Hillsborough county towns of Pelham town
Manchester, NH PMSA	55.49	51.79	22.20	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	58.95	55.02	23.58	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	57.46	53.64	22.99	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town
				Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Belknap	52.39	48.90	20.96	
Carroll	52.67	49.16	21.07	
Cheshire	62.16	58.02	24.87	
Coos	47.68	44.51	19.07	
Grafton	54.08	50.48	21.63	
Hillsborough	67.49	62.99	27.00	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	66.52	62.08	26.61	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	65.18	60.84	26.07	Deerfield town, Northwood town, Nottingham town
Strafford	60.11	56.10	24.04	Middleton town, New Durham town, Strafford town
Sullivan	50.79	47.41	20.32	

N E W J E R S E Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	65.24	60.90	26.10	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	79.01	73.75	31.61	Bergen, Passaic
Jersey City, NJ PMSA	65.85	61.46	26.34	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	79.01	73.75	31.61	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	77.35	72.19	30.94	Monmouth, Ocean
Newark, NJ PMSA	77.15	72.00	30.86	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	60.32	56.30	24.13	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	75.81	70.75	30.32	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	62.72	58.54	25.09	Cumberland

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W M E X I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albuquerque, NM MSA	53.84	50.26	21.54	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	42.73	39.88	17.09	Dona Ana
Santa Fe, NM MSA	63.71	59.46	25.49	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	A	B	C
Catron	40.13	37.45	16.05
Cibola	40.13	37.45	16.05
Curry	40.13	37.45	16.05
Eddy	44.82	41.83	17.93
Guadalupe	40.13	37.45	16.05
Hidalgo	40.13	37.45	16.05
Lincoln	40.60	37.89	16.24
Mckinley	51.85	48.39	20.74
Otero	40.60	37.89	16.24
Rio Arriba	40.13	37.45	16.05
San Juan	51.85	48.39	20.74
Sierra	40.60	37.89	16.24
Taos	42.80	39.95	17.12
Union	40.13	37.45	16.05

NONMETROPOLITAN COUNTIES	A	B	C
Chaves	40.60	37.89	16.24
Colfax	40.13	37.45	16.05
Debaca	40.13	37.45	16.05
Grant	40.13	37.45	16.05
Harding	40.13	37.45	16.05
Lea	44.82	41.83	17.93
Luna	40.13	37.45	16.05
Mora	40.13	37.45	16.05
Quay	40.13	37.45	16.05
Roosevelt	40.13	37.45	16.05
San Miguel	40.13	37.45	16.05
Socorro	40.60	37.89	16.24
Torrance	40.13	37.45	16.05

N E W Y O R K

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	52.71	49.20	21.09	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	46.00	42.93	18.40	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	45.34	42.33	18.14	Erie, Niagara
Dutchess County, NY PMSA	72.63	67.79	29.05	Dutchess
Elmira, NY MSA	46.84	43.71	18.74	Chemung
Glens Falls, NY MSA	49.91	46.58	19.96	Warren, Washington
Jamestown, NY MSA	43.39	40.50	17.36	Chautauqua
Nassau-Suffolk, NY PMSA	75.52	70.49	30.21	Nassau, Suffolk
New York, NY PMSA	65.64	61.26	26.25	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	75.52	70.49	30.21	Westchester
Newburgh, NY-PA PMSA	67.46	62.97	26.99	Orange
Rochester, NY MSA	55.50	51.80	22.20	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	48.51	45.28	19.40	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	44.41	41.46	17.76	Herkimer, Oneida

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	A	B	C
Allegany	39.47	36.84	15.79
Chenango	46.37	43.28	18.55
Columbia	45.77	42.72	18.31
Delaware	43.33	40.44	17.33
Franklin	42.60	39.76	17.04
Greene	49.06	45.79	19.62
Jefferson	48.07	44.87	19.23
Otsego	43.33	40.44	17.33
Schuyler	44.22	41.27	17.69
Steuben	44.22	41.27	17.69
Tompkins	49.94	46.62	19.98
Wyoming	43.78	40.86	17.51
Cattaraugus	39.47	36.84	15.79
Clinton	44.31	41.35	17.72
Cortland	48.26	45.04	19.30
Essex	42.60	39.76	17.04
Fulton	39.64	37.00	15.86
Hamilton	42.60	39.76	17.04
Lewis	45.92	42.86	18.37
St. Lawrence	43.78	40.86	17.51
Seneca	47.09	43.95	18.84
Sullivan	51.80	48.35	20.72
Ulster	57.19	53.38	22.87
Yates	43.95	41.02	17.58

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Asheville, NC MSA	42.17	39.35	16.87	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	45.81	42.74	18.32	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	42.50	39.67	17.00	Cumberland
Goldsboro, NC MSA	42.17	39.35	16.87	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	43.27	40.39	17.31	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	42.17	39.35	16.87	Pitt
Hickory-Morganton, NC MSA	44.06	41.12	17.62	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	42.17	39.35	16.87	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	50.31	46.95	20.13	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	49.95	46.62	19.98	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	42.17	39.35	16.87	Edgecombe, Nash
Wilmington, NC MSA	42.17	39.35	16.87	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	42.17	39.35	16.87
Ashe	42.17	39.35	16.87
Beaufort	42.17	39.35	16.87
Bladen	42.17	39.35	16.87
Carteret	42.17	39.35	16.87
Cherokee	42.17	39.35	16.87
Clay	42.17	39.35	16.87
Columbus	42.17	39.35	16.87
Dare	42.17	39.35	16.87
Gates	42.17	39.35	16.87
Anson	42.17	39.35	16.87
Avery	42.17	39.35	16.87
Bertie	42.17	39.35	16.87
Camden	42.17	39.35	16.87
Caswell	42.17	39.35	16.87
Chowan	42.17	39.35	16.87
Cleveland	42.17	39.35	16.87
Craven	42.17	39.35	16.87
Duplin	42.17	39.35	16.87
Graham	42.17	39.35	16.87

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Granville	42.17	39.35	16.87
Halifax	42.17	39.35	16.87
Haywood	42.17	39.35	16.87
Hertford	42.17	39.35	16.87
Hyde	42.17	39.35	16.87
Jackson	42.17	39.35	16.87
Lee	42.56	39.72	17.02
Mcdowell	42.17	39.35	16.87
Martin	42.17	39.35	16.87
Montgomery	42.17	39.35	16.87
Northampton	42.17	39.35	16.87
Pasquotank	42.17	39.35	16.87
Perquimans	42.17	39.35	16.87
Polk	42.17	39.35	16.87
Robeson	42.17	39.35	16.87
Rutherford	42.17	39.35	16.87
Scotland	42.17	39.35	16.87
Surry	42.17	39.35	16.87
Transylvania	42.17	39.35	16.87
Vance	42.17	39.35	16.87
Washington	42.17	39.35	16.87
Wilkes	42.95	40.09	17.18
Yancey	42.17	39.35	16.87

NONMETROPOLITAN COUNTIES	A	B	C
Greene	42.17	39.35	16.87
Harnett	42.17	39.35	16.87
Henderson	42.17	39.35	16.87
Hoke	42.17	39.35	16.87
Iredell	46.00	42.94	18.40
Jones	42.17	39.35	16.87
Lenoir	42.17	39.35	16.87
Macon	42.17	39.35	16.87
Mitchell	42.17	39.35	16.87
Moore	42.17	39.35	16.87
Pamlico	42.17	39.35	16.87
Pender	42.17	39.35	16.87
Person	42.17	39.35	16.87
Richmond	42.17	39.35	16.87
Rockingham	42.17	39.35	16.87
Sampson	42.17	39.35	16.87
Stanly	42.17	39.35	16.87
Swain	42.17	39.35	16.87
Tyrrell	42.17	39.35	16.87
Warren	42.17	39.35	16.87
Watauga	51.23	47.82	20.49
Wilson	42.17	39.35	16.87

N O R T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bismarck, ND MSA	44.18	41.23	17.67	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	44.09	41.15	17.64	Cass
Grand Forks, ND-MN MSA	42.14	39.34	16.86	Grand Forks

NONMETROPOLITAN COUNTIES	A	B	C
Adams	38.32	35.76	15.33
Benson	38.32	35.76	15.33
Bottineau	38.32	35.76	15.33
Burke	38.32	35.76	15.33
Dickey	38.32	35.76	15.33
Dunn	38.32	35.76	15.33
Emmons	38.32	35.76	15.33
Golden Valley	38.32	35.76	15.33

NONMETROPOLITAN COUNTIES	A	B	C
Barnes	38.32	35.76	15.33
Billings	38.32	35.76	15.33
Bowman	38.32	35.76	15.33
Cavalier	38.32	35.76	15.33
Divide	38.32	35.76	15.33
Eddy	38.32	35.76	15.33
Foster	38.32	35.76	15.33
Grant	38.32	35.76	15.33

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Griggs	38.32	35.76	15.33
Kidder	38.32	35.76	15.33
Logan	38.32	35.76	15.33
Mcintosh	38.32	35.76	15.33
Mclean	38.32	35.76	15.33
Mountrail	38.32	35.76	15.33
Oliver	38.32	35.76	15.33
Pierce	38.32	35.76	15.33
Ransom	38.32	35.76	15.33
Richland	38.32	35.76	15.33
Sargent	38.32	35.76	15.33
Sioux	38.32	35.76	15.33
Stark	38.32	35.76	15.33
Stutsman	38.32	35.76	15.33
Traill	38.32	35.76	15.33
Ward	38.32	35.76	15.33
Williams	38.32	35.76	15.33

NONMETROPOLITAN COUNTIES	A	B	C
Hettinger	38.32	35.76	15.33
Lamoure	38.32	35.76	15.33
Mchenry	38.32	35.76	15.33
Mckenzie	38.32	35.76	15.33
Mercer	38.32	35.76	15.33
Nelson	38.32	35.76	15.33
Pembina	38.32	35.76	15.33
Ramsey	38.32	35.76	15.33
Renville	38.32	35.76	15.33
Rolette	38.32	35.76	15.33
Sheridan	38.32	35.76	15.33
Slope	38.32	35.76	15.33
Steele	38.32	35.76	15.33
Towner	38.32	35.76	15.33
Walsh	38.32	35.76	15.33
Wells	38.32	35.76	15.33

O H I O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Akron, OH PMSA	47.31	44.15	18.92	Portage, Summit
Brown County, OH	40.76	38.04	16.30	Brown
Canton-Massillon, OH MSA	40.76	38.04	16.30	Carroll, Stark
Cincinnati, OH-KY-IN	46.57	43.46	18.63	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	48.09	44.88	19.24	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	45.62	42.57	18.25	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	42.48	39.65	16.99	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	48.39	45.17	19.36	Butler
Huntington-Ashland, WV-KY-OH MSA	40.60	37.89	16.24	Lawrence
Lima, OH MSA	41.42	38.67	16.57	Allen, Auglaize
Mansfield, OH MSA	40.76	38.04	16.30	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	40.60	37.89	16.24	Washington
Steubenville-Weirton, OH-WV MSA	41.71	38.93	16.69	Jefferson
Toledo, OH MSA	47.80	44.62	19.12	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	41.24	38.48	16.50	Belmont
Youngstown-Warren, OH MSA	41.42	38.67	16.57	Columbiana, Mahoning, Trumbull

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O H I O continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	40.60	37.89	16.24
Athens	40.60	37.89	16.24
Clinton	40.60	37.89	16.24
Darke	40.60	37.89	16.24
Erie	42.30	39.48	16.92
Gallia	40.60	37.89	16.24
Hancock	40.70	37.98	16.28
Harrison	40.60	37.89	16.24
Highland	40.60	37.89	16.24
Holmes	40.60	37.89	16.24
Jackson	40.60	37.89	16.24
Logan	40.60	37.89	16.24
Meigs	40.60	37.89	16.24
Monroe	40.60	37.89	16.24
Morrow	40.60	37.89	16.24
Noble	40.60	37.89	16.24
Paulding	41.74	38.96	16.69
Pike	40.60	37.89	16.24
Putnam	40.60	37.89	16.24
Sandusky	42.30	39.48	16.92
Seneca	40.60	37.89	16.24
Tuscarawas	40.60	37.89	16.24
Van Wert	40.60	37.89	16.24
Wayne	40.79	38.07	16.32
Wyandot	40.60	37.89	16.24

NONMETROPOLITAN COUNTIES	A	B	C
Ashland	40.60	37.89	16.24
Champaign	40.60	37.89	16.24
Coshocton	40.60	37.89	16.24
Defiance	41.74	38.96	16.69
Fayette	40.60	37.89	16.24
Guernsey	40.60	37.89	16.24
Hardin	40.60	37.89	16.24
Henry	41.74	38.96	16.69
Hocking	40.60	37.89	16.24
Huron	40.60	37.89	16.24
Knox	40.60	37.89	16.24
Marion	40.60	37.89	16.24
Mercer	40.60	37.89	16.24
Morgan	40.60	37.89	16.24
Muskingum	40.60	37.89	16.24
Ottawa	42.69	39.83	17.07
Perry	40.60	37.89	16.24
Preble	40.70	37.98	16.28
Ross	40.60	37.89	16.24
Scioto	40.60	37.89	16.24
Shelby	41.53	38.77	16.61
Union	45.24	42.23	18.10
Vinton	40.60	37.89	16.24
Williams	41.74	38.96	16.69

O K L A H O M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Enid, OK MSA	43.64	40.73	17.46	Garfield
Fort Smith, AR-OK MSA	39.39	36.76	15.76	Sequoyah
Lawton, OK MSA	39.49	36.85	15.79	Comanche
Oklahoma City, OK MSA	40.59	37.89	16.24	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	39.49	36.85	15.79	Creek, Osage, Rogers, Tulsa, Wagoner

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O K L A H O M A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adair	39.13	36.52	15.65
Atoka	39.13	36.52	15.65
Beckham	39.13	36.52	15.65
Bryan	39.13	36.52	15.65
Carter	39.13	36.52	15.65
Choctaw	39.13	36.52	15.65
Coal	39.13	36.52	15.65
Craig	39.13	36.52	15.65
Delaware	39.13	36.52	15.65
Ellis	39.13	36.52	15.65
Grady	39.13	36.52	15.65
Greer	39.13	36.52	15.65
Harper	39.13	36.52	15.65
Hughes	39.13	36.52	15.65
Jefferson	39.13	36.52	15.65
Kay	39.13	36.52	15.65
Kiowa	39.13	36.52	15.65
Le Flore	39.13	36.52	15.65
Love	39.13	36.52	15.65
Mcintosh	39.13	36.52	15.65
Marshall	39.13	36.52	15.65
Murray	39.13	36.52	15.65
Noble	39.13	36.52	15.65
Okfuskee	39.13	36.52	15.65
Ottawa	39.13	36.52	15.65
Payne	39.13	36.52	15.65
Pontotoc	39.13	36.52	15.65
Roger Mills	39.13	36.52	15.65
Stephens	39.13	36.52	15.65
Tillman	39.13	36.52	15.65
Washita	39.13	36.52	15.65
Woodward	39.13	36.52	15.65

NONMETROPOLITAN COUNTIES	A	B	C
Alfalfa	39.13	36.52	15.65
Beaver	39.13	36.52	15.65
Blaine	39.13	36.52	15.65
Caddo	39.13	36.52	15.65
Cherokee	39.13	36.52	15.65
Cimarron	39.13	36.52	15.65
Cotton	39.13	36.52	15.65
Custer	39.13	36.52	15.65
Dewey	39.13	36.52	15.65
Garvin	39.13	36.52	15.65
Grant	39.13	36.52	15.65
Harmon	39.13	36.52	15.65
Haskell	39.13	36.52	15.65
Jackson	39.13	36.52	15.65
Johnston	39.13	36.52	15.65
Kingfisher	39.13	36.52	15.65
Latimer	39.13	36.52	15.65
Lincoln	39.13	36.52	15.65
Mccurtain	39.13	36.52	15.65
Major	39.13	36.52	15.65
Mayes	39.13	36.52	15.65
Muskogee	39.13	36.52	15.65
Nowata	39.13	36.52	15.65
Okmulgee	39.13	36.52	15.65
Pawnee	39.13	36.52	15.65
Pittsburg	39.13	36.52	15.65
Pushmataha	39.13	36.52	15.65
Seminole	39.13	36.52	15.65
Texas	39.13	36.52	15.65
Washington	39.13	36.52	15.65
Woods	39.13	36.52	15.65

O R E G O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Corvallis, OR MSA	54.17	50.56	21.67	Benton
Eugene-Springfield, OR MSA	58.50	54.59	23.40	Lane
Medford-Ashland, OR MSA	58.11	54.23	23.24	Jackson

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O R E G O N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Portland-Vancouver, OR-WA PMSA	50.90	47.50	20.36	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	54.65	51.01	21.86	Marion, Polk

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Baker	52.58	49.08	21.03	Clatsop	51.15	47.74	20.46
Coos	54.96	51.30	21.98	Crook	55.64	51.92	22.25
Curry	54.96	51.30	21.98	Deschutes	55.64	51.92	22.25
Douglas	54.96	51.30	21.98	Gilliam	52.58	49.08	21.03
Grant	52.58	49.08	21.03	Harney	50.20	46.85	20.08
Hood River	55.64	51.92	22.25	Jefferson	55.64	51.92	22.25
Josephine	54.96	51.30	21.98	Klamath	50.20	46.85	20.08
Lake	50.20	46.85	20.08	Lincoln	51.15	47.74	20.46
Linn	53.64	50.06	21.46	Malheur	50.20	46.85	20.08
Morrow	52.58	49.08	21.03	Sherman	55.64	51.92	22.25
Tillamook	51.15	47.74	20.46	Umatilla	52.58	49.08	21.03
Union	52.58	49.08	21.03	Wallowa	52.58	49.08	21.03
Wasco	55.64	51.92	22.25	Wheeler	52.58	49.08	21.03

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	51.37	47.95	20.55	Carbon, Lehigh, Northampton
Altoona, PA MSA	44.49	41.52	17.80	Blair
Erie, PA MSA	51.10	47.70	20.44	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	52.57	49.07	21.03	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	43.20	40.32	17.28	Cambria, Somerset
Lancaster, PA MSA	53.40	49.84	21.36	Lancaster
Newburgh, NY-PA PMSA	61.77	57.66	24.71	Pike
Philadelphia, PA-NJ PMSA	60.32	56.30	24.13	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	42.10	39.29	16.84	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	50.09	46.76	20.04	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	40.86	38.14	16.34	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	47.43	44.27	18.97	Mercer
State College, PA MSA	57.27	53.44	22.91	Centre
Williamsport, PA MSA	43.20	40.32	17.28	Lycoming
York, PA MSA	48.26	45.04	19.30	York

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH PAGE 41

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	49.31	46.02	19.72
Bedford	40.86	38.14	16.34
Cameron	42.55	39.71	17.02
Clearfield	43.49	40.59	17.40
Crawford	43.11	40.24	17.24
Forest	41.61	38.83	16.64
Fulton	40.86	38.14	16.34
Huntingdon	40.86	38.14	16.34
Jefferson	43.49	40.59	17.40
Lawrence	43.11	40.24	17.24
Mifflin	43.02	40.15	17.21
Montour	43.49	40.59	17.40
Potter	42.55	39.71	17.02
Snyder	42.08	39.27	16.83
Susquehanna	41.98	39.18	16.79
Union	49.22	45.93	19.69
Warren	43.11	40.24	17.24

NONMETROPOLITAN COUNTIES	A	B	C
Armstrong	50.53	47.16	20.21
Bradford	41.98	39.18	16.79
Clarion	41.61	38.83	16.64
Clinton	42.17	39.36	16.87
Elk	42.55	39.71	17.02
Franklin	46.49	43.39	18.60
Greene	43.49	40.59	17.40
Indiana	50.53	47.16	20.21
Juniata	42.08	39.27	16.83
Mc Kean	42.55	39.71	17.02
Monroe	55.50	51.81	22.20
Northumberland	43.49	40.59	17.40
Schuylkill	46.96	43.83	18.78
Sullivan	41.98	39.18	16.79
Tioga	41.98	39.18	16.79
Venango	41.61	38.83	16.64
Wayne	51.47	48.04	20.59

R H O D E I S L A N D

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	60.76	56.71	24.30	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA MSA	65.96	61.56	26.39	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Newport	77.68	72.50	31.07	Middletown town, Newport city, Portsmouth town
Washington	59.39	55.43	23.75	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	42.69	39.86	17.08	Aiken, Edgefield
Charleston-North Charleston, SC MSA	45.46	42.43	18.19	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	45.81	42.74	18.32	York
Columbia, SC MSA	45.95	42.89	18.38	Lexington, Richland
Florence, SC MSA	40.70	37.98	16.28	Florence
Greenville-Spartanburg-Anderson, SC MSA	40.70	37.98	16.28	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	40.70	37.98	16.28	Horry
Sumter, SC MSA	40.70	37.98	16.28	Sumter

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Abbeville	40.66	37.94	16.26	Allendale	40.66	37.94	16.26
Bamberg	40.66	37.94	16.26	Barnwell	40.66	37.94	16.26
Beaufort	41.49	38.72	16.60	Calhoun	40.66	37.94	16.26
Chester	40.66	37.94	16.26	Chesterfield	40.66	37.94	16.26
Clarendon	40.66	37.94	16.26	Colleton	40.66	37.94	16.26
Darlington	40.66	37.94	16.26	Dillon	40.66	37.94	16.26
Fairfield	40.66	37.94	16.26	Georgetown	40.66	37.94	16.26
Greenwood	40.66	37.94	16.26	Hampton	40.66	37.94	16.26
Jasper	40.66	37.94	16.26	Kershaw	40.66	37.94	16.26
Lancaster	40.66	37.94	16.26	Laurens	40.66	37.94	16.26
Lee	40.66	37.94	16.26	Mccormick	40.66	37.94	16.26
Marion	40.66	37.94	16.26	Marlboro	40.66	37.94	16.26
Newberry	40.66	37.94	16.26	Oconee	40.66	37.94	16.26
Orangeburg	40.66	37.94	16.26	Saluda	40.66	37.94	16.26
Union	40.66	37.94	16.26	Williamsburg	40.66	37.94	16.26

S O U T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Rapid City, SD MSA	40.03	37.37	16.01	Pennington
Sioux Falls, SD MSA	42.76	39.91	17.10	Lincoln, Minnehaha

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Aurora	39.50	36.86	15.80
Bennett	39.50	36.86	15.80
Brookings	39.50	36.86	15.80
Brule	39.50	36.86	15.80
Butte	39.50	36.86	15.80
Charles Mix	39.50	36.86	15.80
Clay	39.50	36.86	15.80
Corson	39.50	36.86	15.80
Davison	39.50	36.86	15.80
Deuel	39.50	36.86	15.80
Douglas	39.50	36.86	15.80
Fall River	39.50	36.86	15.80
Grant	39.50	36.86	15.80
Haakon	39.50	36.86	15.80
Hand	39.50	36.86	15.80
Harding	39.50	36.86	15.80
Hutchinson	39.50	36.86	15.80
Jackson	39.50	36.86	15.80
Jones	39.50	36.86	15.80
Lake	39.50	36.86	15.80
Lyman	39.50	36.86	15.80
Mcpherson	39.50	36.86	15.80
Meade	39.50	36.86	15.80
Miner	39.50	36.86	15.80
Perkins	39.50	36.86	15.80
Roberts	39.50	36.86	15.80
Shannon	39.50	36.86	15.80
Stanley	42.91	40.05	17.17
Todd	39.50	36.86	15.80
Turner	39.50	36.86	15.80
Walworth	39.50	36.86	15.80
Ziebach	39.50	36.86	15.80

NONMETROPOLITAN COUNTIES	A	B	C
Beadle	39.50	36.86	15.80
Bon Homme	39.50	36.86	15.80
Brown	39.50	36.86	15.80
Buffalo	39.50	36.86	15.80
Campbell	39.50	36.86	15.80
Clark	39.50	36.86	15.80
Codington	39.50	36.86	15.80
Custer	39.50	36.86	15.80
Day	39.50	36.86	15.80
Dewey	39.50	36.86	15.80
Edmunds	39.50	36.86	15.80
Faulk	39.50	36.86	15.80
Gregory	39.50	36.86	15.80
Hamlin	39.50	36.86	15.80
Hanson	39.50	36.86	15.80
Hughes	42.91	40.05	17.17
Hyde	39.50	36.86	15.80
Jerauld	39.50	36.86	15.80
Kingsbury	39.50	36.86	15.80
Lawrence	39.50	36.86	15.80
Mccook	39.50	36.86	15.80
Marshall	39.50	36.86	15.80
Mellette	39.50	36.86	15.80
Moody	39.50	36.86	15.80
Potter	39.50	36.86	15.80
Sanborn	39.50	36.86	15.80
Spink	39.50	36.86	15.80
Sully	39.50	36.86	15.80
Tripp	39.50	36.86	15.80
Union	39.50	36.86	15.80
Yankton	39.50	36.86	15.80

T E N N E S S E E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	44.43	41.46	17.77	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	45.21	42.19	18.08	Montgomery
Jackson, TN MSA	41.34	38.58	16.54	Chester, Madison

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	41.34	38.58	16.54	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	41.63	38.85	16.65	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	44.62	41.65	17.85	Fayette, Shelby, Tipton
Nashville, TN MSA	49.45	46.15	19.78	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Bedford	41.04	38.30	16.42	Benton	41.04	38.30	16.42
Bledsoe	41.04	38.30	16.42	Bradley	41.04	38.30	16.42
Campbell	41.04	38.30	16.42	Cannon	41.04	38.30	16.42
Carroll	41.04	38.30	16.42	Claiborne	41.04	38.30	16.42
Clay	41.04	38.30	16.42	Cocke	41.04	38.30	16.42
Coffee	41.04	38.30	16.42	Crockett	41.04	38.30	16.42
Cumberland	41.04	38.30	16.42	Decatur	41.04	38.30	16.42
Dekalb	41.04	38.30	16.42	Dyer	41.04	38.30	16.42
Fentress	41.04	38.30	16.42	Franklin	41.04	38.30	16.42
Gibson	41.04	38.30	16.42	Giles	41.04	38.30	16.42
Grainger	41.04	38.30	16.42	Greene	41.04	38.30	16.42
Grundy	41.04	38.30	16.42	Hamblen	41.04	38.30	16.42
Hancock	41.04	38.30	16.42	Hardeman	41.04	38.30	16.42
Hardin	41.04	38.30	16.42	Haywood	41.04	38.30	16.42
Henderson	41.04	38.30	16.42	Henry	41.04	38.30	16.42
Hickman	41.04	38.30	16.42	Houston	41.04	38.30	16.42
Humphreys	41.04	38.30	16.42	Jackson	41.04	38.30	16.42
Jefferson	41.04	38.30	16.42	Johnson	41.04	38.30	16.42
Lake	41.04	38.30	16.42	Lauderdale	41.04	38.30	16.42
Lawrence	41.04	38.30	16.42	Lewis	41.04	38.30	16.42
Lincoln	41.04	38.30	16.42	Mcminn	41.04	38.30	16.42
Mcnairy	41.04	38.30	16.42	Macon	41.04	38.30	16.42
Marshall	41.04	38.30	16.42	Maury	41.04	38.30	16.42
Meigs	41.04	38.30	16.42	Monroe	41.04	38.30	16.42
Moore	41.04	38.30	16.42	Morgan	41.04	38.30	16.42
Obion	41.04	38.30	16.42	Overton	41.04	38.30	16.42
Perry	41.04	38.30	16.42	Pickett	41.04	38.30	16.42
Polk	41.04	38.30	16.42	Putnam	41.04	38.30	16.42
Rhea	41.04	38.30	16.42	Roane	41.04	38.30	16.42
Scott	41.04	38.30	16.42	Sequatchie	44.10	41.16	17.64
Smith	41.04	38.30	16.42	Stewart	41.04	38.30	16.42
Trousdale	41.04	38.30	16.42	Van Buren	41.04	38.30	16.42
Warren	41.04	38.30	16.42	Wayne	41.04	38.30	16.42

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	A	B	C
Weakley	41.04	38.30	16.42
White	41.04	38.30	16.42

T E X A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Abilene, TX MSA	39.47	36.83	15.79	Taylor
Amarillo, TX MSA	39.47	36.83	15.79	Potter, Randall
Austin-San Marcos, TX MSA	51.34	47.92	20.54	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	45.09	42.08	18.04	Hardin, Jefferson, Orange
Brazoria, TX PMSA	50.29	46.94	20.12	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	40.02	37.35	16.01	Cameron
Bryan-College Station, TX MSA	52.73	49.22	21.09	Brazos
Corpus Christi, TX MSA	46.01	42.94	18.40	Nueces, San Patricio
Dallas, TX	52.64	49.14	21.06	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	43.61	40.71	17.45	El Paso
Fort Worth-Arlington, TX PMSA	49.05	45.78	19.62	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	45.23	42.22	18.09	Galveston
Henderson County, TX	39.47	36.83	15.79	Henderson
Houston, TX PMSA	46.57	43.47	18.63	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	39.47	36.83	15.79	Bell, Coryell
Laredo, TX MSA	39.47	36.83	15.79	Webb
Longview-Marshall, TX MSA	44.26	41.30	17.70	Gregg, Harrison, Upshur
Lubbock, TX MSA	39.47	36.83	15.79	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	39.56	36.92	15.82	Hidalgo
Odessa-Midland, TX MSA	50.71	47.32	20.28	Ector, Midland
San Angelo, TX MSA	39.47	36.83	15.79	Tom Green
San Antonio, TX MSA	45.13	42.13	18.05	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	39.47	36.83	15.79	Grayson
Texarkana, TX-Texarkana, AR MSA	39.47	36.83	15.79	Bowie
Tyler, TX MSA	45.00	42.00	18.00	Smith
Victoria, TX MSA	54.68	51.02	21.87	Victoria
Waco, TX MSA	39.47	36.83	15.79	Mclennan
Wichita Falls, TX MSA	40.39	37.69	16.16	Archer, Wichita

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Anderson	38.97	36.37	15.59
Angelina	38.97	36.37	15.59
Armstrong	38.97	36.37	15.59
Austin	39.06	36.46	15.62
Bandera	38.97	36.37	15.59
Bee	38.97	36.37	15.59
Borden	38.97	36.37	15.59
Brewster	38.97	36.37	15.59
Brooks	38.97	36.37	15.59
Burleson	38.97	36.37	15.59
Calhoun	38.97	36.37	15.59
Camp	38.97	36.37	15.59
Cass	38.97	36.37	15.59
Cherokee	38.97	36.37	15.59
Clay	38.97	36.37	15.59
Coke	38.97	36.37	15.59
Collingsworth	38.97	36.37	15.59
Comanche	38.97	36.37	15.59
Cooke	38.97	36.37	15.59
Crane	38.97	36.37	15.59
Crosby	38.97	36.37	15.59
Dallam	38.97	36.37	15.59
Deaf Smith	38.97	36.37	15.59
Dewitt	38.97	36.37	15.59
Dimmit	38.97	36.37	15.59
Duval	38.97	36.37	15.59
Edwards	38.97	36.37	15.59
Falls	38.97	36.37	15.59
Fayette	38.97	36.37	15.59
Floyd	38.97	36.37	15.59
Franklin	38.97	36.37	15.59
Frio	38.97	36.37	15.59
Garza	38.97	36.37	15.59
Glasscock	38.97	36.37	15.59
Gonzales	38.97	36.37	15.59
Grimes	38.97	36.37	15.59
Hall	38.97	36.37	15.59
Hansford	38.97	36.37	15.59
Hartley	38.97	36.37	15.59
Hemphill	38.97	36.37	15.59

NONMETROPOLITAN COUNTIES	A	B	C
Andrews	38.97	36.37	15.59
Aransas	38.97	36.37	15.59
Atascosa	38.97	36.37	15.59
Bailey	38.97	36.37	15.59
Baylor	38.97	36.37	15.59
Blanco	38.97	36.37	15.59
Bosque	38.97	36.37	15.59
Briscoe	38.97	36.37	15.59
Brown	38.97	36.37	15.59
Burnet	38.97	36.37	15.59
Callahan	38.97	36.37	15.59
Carson	38.97	36.37	15.59
Castro	38.97	36.37	15.59
Childress	38.97	36.37	15.59
Cochran	38.97	36.37	15.59
Coleman	38.97	36.37	15.59
Colorado	39.06	36.46	15.62
Concho	38.97	36.37	15.59
Cottle	38.97	36.37	15.59
Crockett	38.97	36.37	15.59
Culberson	38.97	36.37	15.59
Dawson	38.97	36.37	15.59
Delta	38.97	36.37	15.59
Dickens	38.97	36.37	15.59
Donley	38.97	36.37	15.59
Eastland	38.97	36.37	15.59
Erath	38.97	36.37	15.59
Fannin	38.97	36.37	15.59
Fisher	38.97	36.37	15.59
Foard	38.97	36.37	15.59
Freestone	38.97	36.37	15.59
Gaines	38.97	36.37	15.59
Gillespie	38.97	36.37	15.59
Goliad	38.97	36.37	15.59
Gray	38.97	36.37	15.59
Hale	38.97	36.37	15.59
Hamilton	38.97	36.37	15.59
Hardeman	38.97	36.37	15.59
Haskell	38.97	36.37	15.59
Hill	38.97	36.37	15.59

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Hockley	38.97	36.37	15.59	Hopkins	38.97	36.37	15.59
Houston	38.97	36.37	15.59	Howard	38.97	36.37	15.59
Hudspeth	38.97	36.37	15.59	Hutchinson	38.97	36.37	15.59
Irion	38.97	36.37	15.59	Jack	38.97	36.37	15.59
Jackson	38.97	36.37	15.59	Jasper	38.97	36.37	15.59
Jeff Davis	38.97	36.37	15.59	Jim Hogg	38.97	36.37	15.59
Jim Wells	38.97	36.37	15.59	Jones	38.97	36.37	15.59
Karnes	38.97	36.37	15.59	Kendall	38.97	36.37	15.59
Kenedy	38.97	36.37	15.59	Kent	38.97	36.37	15.59
Kerr	38.97	36.37	15.59	Kimble	38.97	36.37	15.59
King	38.97	36.37	15.59	Kinney	38.97	36.37	15.59
Kleberg	38.97	36.37	15.59	Knox	38.97	36.37	15.59
Lamar	38.97	36.37	15.59	Lamb	38.97	36.37	15.59
Lampasas	38.97	36.37	15.59	La Salle	38.97	36.37	15.59
Lavaca	38.97	36.37	15.59	Lee	38.97	36.37	15.59
Leon	38.97	36.37	15.59	Limestone	38.97	36.37	15.59
Lipscomb	38.97	36.37	15.59	Live Oak	38.97	36.37	15.59
Llano	38.97	36.37	15.59	Loving	38.97	36.37	15.59
Lynn	38.97	36.37	15.59	Mcculloch	38.97	36.37	15.59
Mcmullen	38.97	36.37	15.59	Madison	38.97	36.37	15.59
Marion	38.97	36.37	15.59	Martin	38.97	36.37	15.59
Mason	38.97	36.37	15.59	Matagorda	39.06	36.46	15.62
Maverick	38.97	36.37	15.59	Medina	38.97	36.37	15.59
Menard	38.97	36.37	15.59	Milam	38.97	36.37	15.59
Mills	38.97	36.37	15.59	Mitchell	38.97	36.37	15.59
Montague	38.97	36.37	15.59	Moore	38.97	36.37	15.59
Morris	38.97	36.37	15.59	Motley	38.97	36.37	15.59
Nacogdoches	39.61	36.97	15.84	Navarro	38.97	36.37	15.59
Newton	38.97	36.37	15.59	Nolan	38.97	36.37	15.59
Ochiltree	38.97	36.37	15.59	Oldham	38.97	36.37	15.59
Palo Pinto	38.97	36.37	15.59	Panola	38.97	36.37	15.59
Parmer	38.97	36.37	15.59	Pecos	38.97	36.37	15.59
Polk	38.97	36.37	15.59	Presidio	38.97	36.37	15.59
Rains	38.97	36.37	15.59	Reagan	38.97	36.37	15.59
Real	38.97	36.37	15.59	Red River	38.97	36.37	15.59
Reeves	38.97	36.37	15.59	Refugio	38.97	36.37	15.59
Roberts	38.97	36.37	15.59	Robertson	38.97	36.37	15.59
Runnels	38.97	36.37	15.59	Rusk	38.97	36.37	15.59
Sabine	38.97	36.37	15.59	San Augustine	38.97	36.37	15.59
San Jacinto	38.97	36.37	15.59	San Saba	38.97	36.37	15.59

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Schleicher	38.97	36.37	15.59
Shackelford	38.97	36.37	15.59
Sherman	38.97	36.37	15.59
Starr	38.97	36.37	15.59
Sterling	38.97	36.37	15.59
Sutton	38.97	36.37	15.59
Terrell	38.97	36.37	15.59
Throckmorton	38.97	36.37	15.59
Trinity	38.97	36.37	15.59
Upton	38.97	36.37	15.59
Val Verde	38.97	36.37	15.59
Walker	41.46	38.70	16.58
Washington	38.97	36.37	15.59
Wheeler	38.97	36.37	15.59
Willacy	38.97	36.37	15.59
Wise	39.06	36.46	15.62
Yoakum	38.97	36.37	15.59
Zapata	38.97	36.37	15.59

NONMETROPOLITAN COUNTIES	A	B	C
Scurry	38.97	36.37	15.59
Shelby	38.97	36.37	15.59
Somervell	38.97	36.37	15.59
Stephens	38.97	36.37	15.59
Stonewall	38.97	36.37	15.59
Swisher	38.97	36.37	15.59
Terry	38.97	36.37	15.59
Titus	38.97	36.37	15.59
Tyler	38.97	36.37	15.59
Uvalde	38.97	36.37	15.59
Van Zandt	38.97	36.37	15.59
Ward	38.97	36.37	15.59
Wharton	39.06	36.46	15.62
Wilbarger	38.97	36.37	15.59
Winkler	38.97	36.37	15.59
Wood	38.97	36.37	15.59
Young	38.97	36.37	15.59
Zavala	38.97	36.37	15.59

U T A H

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kane County, UT	47.93	44.73	19.17	Kane
Provo-Orem, UT MSA	46.16	43.08	18.46	Utah
Salt Lake City-Ogden, UT MSA	46.16	43.08	18.46	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	A	B	C
Beaver	50.20	46.85	20.08
Cache	46.16	43.08	18.46
Daggett	57.10	53.29	22.84
Emery	57.10	53.29	22.84
Grand	57.10	53.29	22.84
Juab	50.20	46.85	20.08
Morgan	57.10	53.29	22.84
Rich	46.16	43.08	18.46
Sanpete	50.20	46.85	20.08
Summit	59.10	55.15	23.64
Uintah	57.10	53.29	22.84
Washington	54.33	50.71	21.73

NONMETROPOLITAN COUNTIES	A	B	C
Box Elder	46.16	43.08	18.46
Carbon	57.10	53.29	22.84
Duchesne	57.10	53.29	22.84
Garfield	50.20	46.85	20.08
Iron	50.20	46.85	20.08
Millard	50.20	46.85	20.08
Piute	50.20	46.85	20.08
San Juan	57.10	53.29	22.84
Sevier	50.20	46.85	20.08
Tooele	46.16	43.08	18.46
Wasatch	57.10	53.29	22.84
Wayne	50.20	46.85	20.08

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

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V E R M O N T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Burlington, VT MSA	60.13	56.12	24.05	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Addison	47.68	44.51	19.07	
Bennington	49.34	46.06	19.74	
Caledonia	40.51	37.81	16.20	
Chittenden	55.20	51.52	22.08	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	40.51	37.81	16.20	
Franklin	45.41	42.38	18.16	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	40.51	37.81	16.20	Alburg town, Isle La Motte town, North Hero town
Lamoille	48.99	45.72	19.60	
Orange	48.55	45.31	19.42	
Orleans	40.51	37.81	16.20	
Rutland	52.66	49.16	21.06	
Washington	48.82	45.56	19.53	
Windham	50.91	47.52	20.36	
Windsor	52.14	48.67	20.86	

V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Charlottesville, VA MSA	51.03	47.63	20.41	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	40.71	38.00	16.28	Clarke
Culpeper County, VA	42.41	39.59	16.97	Culpeper
Danville, VA MSA	39.16	36.54	15.66	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	41.34	38.58	16.54	Scott, Washington, Bristol city
King George County, VA	47.48	44.31	18.99	King George
Lynchburg, VA MSA	40.62	37.91	16.25	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	50.31	46.95	20.13	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Suffolk city, Virginia Beach city, Williamsburg city
Richmond-Petersburg, VA MSA	45.64	42.59	18.26	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	40.16	37.48	16.06	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	40.71	38.00	16.28	Warren
Washington, DC-MD-VA	74.19	69.25	29.67	Arlington, Fairfax, Fauquier, Loudoun, Prince William Spotsylvania, Stafford, Alexandria city, Fairfax city Falls Church city, Fredericksburg city, Manassas city Manassas Park city

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Accomack	38.17	35.62	15.27	Alleghany	38.26	35.71	15.30
Amelia	38.17	35.62	15.27	Appomattox	38.17	35.62	15.27
Augusta	38.26	35.71	15.30	Bath	38.26	35.71	15.30
Bland	38.17	35.62	15.27	Brunswick	38.17	35.62	15.27
Buchanan	38.17	35.62	15.27	Buckingham	38.17	35.62	15.27
Caroline	46.28	43.20	18.51	Carroll	38.17	35.62	15.27
Charlotte	38.17	35.62	15.27	Craig	38.17	35.62	15.27
Cumberland	38.17	35.62	15.27	Dickenson	38.17	35.62	15.27
Essex	38.17	35.62	15.27	Floyd	38.17	35.62	15.27
Franklin	38.17	35.62	15.27	Frederick	39.68	37.04	15.87
Giles	38.17	35.62	15.27	Grayson	38.17	35.62	15.27
Greensville	38.17	35.62	15.27	Halifax	38.17	35.62	15.27
Henry	38.34	35.79	15.34	Highland	38.26	35.71	15.30
King and Queen	38.17	35.62	15.27	King William	38.17	35.62	15.27
Lancaster	38.17	35.62	15.27	Lee	38.17	35.62	15.27
Louisa	39.95	37.29	15.98	Lunenburg	38.17	35.62	15.27
Madison	40.57	37.86	16.23	Mecklenburg	38.17	35.62	15.27
Middlesex	38.17	35.62	15.27	Montgomery	46.37	43.28	18.55
Nelson	38.17	35.62	15.27	Northampton	38.17	35.62	15.27
Northumberland	38.17	35.62	15.27	Nottoway	38.17	35.62	15.27
Orange	41.35	38.59	16.54	Page	38.34	35.79	15.34
Patrick	38.17	35.62	15.27	Prince Edward	38.17	35.62	15.27
Pulaski	38.17	35.62	15.27	Rappahannock	41.35	38.59	16.54
Richmond	38.17	35.62	15.27	Rockbridge	38.26	35.71	15.30
Rockingham	39.60	36.96	15.84	Russell	38.17	35.62	15.27
Shenandoah	39.68	37.04	15.87	Smyth	38.17	35.62	15.27
Southampton	38.17	35.62	15.27	Surry	38.17	35.62	15.27
Sussex	38.17	35.62	15.27	Tazewell	38.17	35.62	15.27

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Westmoreland	38.17	35.62	15.27
Wythe	38.17	35.62	15.27
Wise	38.17	35.62	15.27

W A S H I N G T O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bellingham, WA MSA	56.88	53.09	22.75	Whatcom
Bremerton, WA PMSA	52.92	49.40	21.17	Kitsap
Olympia, WA PMSA	54.67	51.03	21.87	Thurston
Portland-Vancouver, OR-WA PMSA	50.90	47.50	20.36	Clark
Richland-Kennewick-Pasco, WA MSA	46.22	43.13	18.49	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	59.92	55.91	23.97	Island, King, Snohomish
Spokane, WA MSA	46.03	42.97	18.41	Spokane
Tacoma, WA PMSA	50.88	47.49	20.35	Pierce
Yakima, WA MSA	48.06	44.85	19.22	Yakima

NONMETROPOLITAN COUNTIES	A	B	C
Adams	38.85	36.25	15.54
Chelan	46.74	43.62	18.70
Columbia	50.09	46.76	20.04
Douglas	46.74	43.62	18.70
Garfield	50.09	46.76	20.04
Grays Harbor	50.37	47.01	20.15
Kittitas	42.57	39.73	17.03
Lewis	46.74	43.62	18.70
Mason	50.37	47.01	20.15
Pacific	50.37	47.01	20.15
San Juan	53.17	49.62	21.27
Skamania	46.74	43.62	18.70
Wahkiakum	46.74	43.62	18.70
Whitman	50.09	46.76	20.04
Asotin	50.09	46.76	20.04
Clallam	50.37	47.01	20.15
Cowlitz	40.30	37.61	16.12
Ferry	38.85	36.25	15.54
Grant	38.85	36.25	15.54
Jefferson	50.37	47.01	20.15
Klickitat	46.74	43.62	18.70
Lincoln	38.85	36.25	15.54
Okanogan	42.57	39.73	17.03
Pend Oreille	38.85	36.25	15.54
Skagit	51.36	47.94	20.55
Stevens	38.85	36.25	15.54
Walla Walla	50.09	46.76	20.04

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Berkeley County, WV	40.28	37.59	16.11	Berkeley
Charleston, WV MSA	48.34	45.11	19.33	Kanawha, Putnam
Cumberland, MD-WV MSA	40.07	37.39	16.03	Mineral
Huntington-Ashland, WV-KY-OH MSA	40.60	37.89	16.24	Cabell, Wayne
Jefferson County, WV	40.43	37.73	16.17	Jefferson

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	40.60	37.89	16.24	Wood
Steubenville-Weirton, OH-WV MSA	41.71	38.93	16.69	Brooke, Hancock
Wheeling, WV-OH MSA	41.24	38.48	16.50	Marshall, Ohio

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	40.07	37.39	16.03	Boone	40.07	37.39	16.03
Braxton	40.07	37.39	16.03	Calhoun	40.90	38.17	16.36
Clay	40.07	37.39	16.03	Doddridge	40.07	37.39	16.03
Fayette	40.07	37.39	16.03	Gilmer	40.43	37.74	16.17
Grant	40.07	37.39	16.03	Greenbrier	40.07	37.39	16.03
Hampshire	40.07	37.39	16.03	Hardy	40.07	37.39	16.03
Harrison	40.90	38.17	16.36	Jackson	40.90	38.17	16.36
Lewis	40.07	37.39	16.03	Lincoln	40.07	37.39	16.03
Logan	40.07	37.39	16.03	Mcdowell	40.07	37.39	16.03
Marion	43.99	41.06	17.60	Mason	40.07	37.39	16.03
Mercer	40.07	37.39	16.03	Mingo	40.07	37.39	16.03
Monongalia	43.99	41.06	17.60	Monroe	40.07	37.39	16.03
Morgan	40.07	37.39	16.03	Nicholas	40.07	37.39	16.03
Pendleton	40.07	37.39	16.03	Pleasants	40.07	37.39	16.03
Pocahontas	40.07	37.39	16.03	Preston	43.99	41.06	17.60
Raleigh	40.07	37.39	16.03	Randolph	40.07	37.39	16.03
Ritchie	40.07	37.39	16.03	Roane	40.90	38.17	16.36
Summers	40.07	37.39	16.03	Taylor	40.07	37.39	16.03
Tucker	40.07	37.39	16.03	Tyler	40.07	37.39	16.03
Upshur	40.07	37.39	16.03	Webster	40.07	37.39	16.03
Wetzel	40.07	37.39	16.03	Wirt	40.07	37.39	16.03
Wyoming	40.07	37.39	16.03				

W I S C O N S I N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	40.94	38.22	16.38	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	42.51	39.67	17.00	Douglas
Eau Claire, WI MSA	40.20	37.51	16.08	Chippewa, Eau Claire
Green Bay, WI MSA	40.75	38.04	16.30	Brown
Janesville-Beloit, WI MSA	45.12	42.11	18.05	Rock
Kenosha, WI PMSA	50.28	46.93	20.11	Kenosha
La Crosse, WI-MN MSA	46.53	43.42	18.61	La Crosse
Madison, WI MSA	54.12	50.52	21.65	Dane

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W I S C O N S I N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	48.63	45.38	19.45	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	57.47	53.64	22.99	Pierce, St. Croix
Racine, WI PMSA	44.42	41.45	17.77	Racine
Sheboygan, WI MSA	40.29	37.61	16.12	Sheboygan
Wausau, WI MSA	40.20	37.51	16.08	Marathon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	40.85	38.13	16.34	Ashland	40.20	37.51	16.08
Barron	40.20	37.51	16.08	Bayfield	40.20	37.51	16.08
Buffalo	40.20	37.51	16.08	Burnett	40.20	37.51	16.08
Clark	40.20	37.51	16.08	Columbia	40.20	37.51	16.08
Crawford	40.20	37.51	16.08	Dodge	40.20	37.51	16.08
Door	40.20	37.51	16.08	Dunn	40.20	37.51	16.08
Florence	40.20	37.51	16.08	Fond du Lac	42.16	39.36	16.87
Forest	40.20	37.51	16.08	Grant	40.20	37.51	16.08
Green	40.20	37.51	16.08	Green Lake	40.29	37.60	16.11
Iowa	40.20	37.51	16.08	Iron	40.20	37.51	16.08
Jackson	40.20	37.51	16.08	Jefferson	42.63	39.79	17.05
Juneau	40.85	38.13	16.34	Kewaunee	40.20	37.51	16.08
Lafayette	40.20	37.51	16.08	Langlade	40.20	37.51	16.08
Lincoln	40.20	37.51	16.08	Manitowoc	40.20	37.51	16.08
Marinette	40.20	37.51	16.08	Marquette	40.20	37.51	16.08
Menominee	40.20	37.51	16.08	Monroe	40.20	37.51	16.08
Oconto	40.20	37.51	16.08	Oneida	40.20	37.51	16.08
Pepin	40.20	37.51	16.08	Polk	40.20	37.51	16.08
Portage	40.94	38.21	16.38	Price	40.20	37.51	16.08
Richland	40.20	37.51	16.08	Rusk	40.20	37.51	16.08
Sauk	40.85	38.13	16.34	Sawyer	40.20	37.51	16.08
Shawano	40.20	37.51	16.08	Taylor	40.20	37.51	16.08
Trempealeau	40.20	37.51	16.08	Vernon	40.20	37.51	16.08
Vilas	40.20	37.51	16.08	Walworth	44.12	41.18	17.65
Washburn	40.20	37.51	16.08	Waupaca	40.20	37.51	16.08
Waushara	40.20	37.51	16.08	Wood	40.85	38.13	16.34

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W Y O M I N G

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Casper, WY MSA	54.67	51.02	21.87	Natrona
Cheyenne, WY MSA	45.37	42.35	18.15	Laramie

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Albany	38.32	35.76	15.33	Big Horn	37.65	35.13	15.06
Campbell	37.65	35.13	15.06	Carbon	37.65	35.13	15.06
Converse	37.65	35.13	15.06	Crook	37.65	35.13	15.06
Fremont	37.65	35.13	15.06	Goshen	37.65	35.13	15.06
Hot Springs	37.65	35.13	15.06	Johnson	37.65	35.13	15.06
Lincoln	37.65	35.13	15.06	Niobrara	37.65	35.13	15.06
Park	37.65	35.13	15.06	Platte	37.65	35.13	15.06
Sheridan	50.93	47.52	20.37	Sublette	37.65	35.13	15.06
Sweetwater	37.65	35.13	15.06	Teton	56.12	52.37	22.45
Uinta	37.65	35.13	15.06	Washakie	37.65	35.13	15.06
Weston	37.65	35.13	15.06				

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Pacific Islands	75.13	70.12	30.05				

P U E R T O R I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Aguadilla, PR MSA	44.89	41.89	17.96	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	49.29	46.00	19.72	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	44.89	41.89	17.96	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	44.89	41.89	17.96	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	48.24	45.02	19.30	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	48.24	45.02	19.30	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adjuntas Municipio.....	44.89	41.89	17.96	Aibonito Municipio.....	44.89	41.89	17.96
Arroyo Municipio.....	44.89	41.89	17.96	Barranquitas Municipio..	44.89	41.89	17.96
Ciales Municipio.....	44.89	41.89	17.96	Coamo Municipio.....	44.89	41.89	17.96
Culebra Municipio.....	44.89	41.89	17.96	Guanica Municipio.....	44.89	41.89	17.96
Guayama Municipio.....	44.89	41.89	17.96	Isabela Municipio.....	44.89	41.89	17.96
Jayuya Municipio.....	44.89	41.89	17.96	Lajas Municipio.....	44.89	41.89	17.96
Lares Municipio.....	44.89	41.89	17.96	Las Marias Municipio....	44.89	41.89	17.96
Maricao Municipio.....	44.89	41.89	17.96	Maunabo Municipio.....	44.89	41.89	17.96
Orocovis Municipio.....	44.89	41.89	17.96	Patillas Municipio.....	44.89	41.89	17.96
Quebradillas Municipio..	49.29	46.00	19.72	Rincon Municipio.....	44.89	41.89	17.96
Salinas Municipio.....	44.89	41.89	17.96	San Sebastian Municipio.	44.89	41.89	17.96
Santa Isabel Municipio..	44.89	41.89	17.96	Utuado Municipio.....	44.89	41.89	17.96
Vieques Municipio.....	44.89	41.89	17.96				

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Virgin Islands.....	58.14	54.27	23.25				

Note: A = First 600 units; B = Remainder of units; C = PA owned units.

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Federal Housing Enterprise Oversight Office

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LIST OF PUBLIC LAWS

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H.R. 1499/P.L. 107–157
District of Columbia College Access Improvement Act of 2002 (Apr. 4, 2002; 116 Stat. 118)

H.R. 2739/P.L. 107–158
To amend Public Law 107-10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes. (Apr. 4, 2002; 116 Stat. 121)

H.R. 3985/P.L. 107–159
To amend the Act entitled ''An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases'', approved August 9, 1955, to provide for binding arbitration clauses in leases and contracts related to reservation lands of the Gila River Indian Community. (Apr. 4, 2002; 116 Stat. 122)

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0–999	(869–048–00045–3)	47.00	Jan. 1, 2002
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–044–00048–2)	45.00	Apr. 1, 2001
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
1–140	(869–044–00053–9)	54.00	Apr. 1, 2001
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5] Apr. 1, 2001
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–044–00081–4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5] Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
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Subscription (mailed as issued)		298.00	2000
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.