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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-02-11]

Tobacco Inspection; Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments and notice of referenda results.

SUMMARY: Pursuant to the requirements of section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Appropriations Act), referenda were conducted during the periods of March 11-15, 2002, and March 18-22, 2002, among producers of each type of tobacco eligible for price support. A majority of producers favored mandatory grading for flue-cured tobacco, types 11, 12, 13, 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; and dark air-cured tobacco, types 35 and 36. This interim final rule amends the regulations to provide mandatory grading for these types of tobacco. Producers of cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55 did not approve mandatory grading. This rule will also reduce the fee for mandatory inspection from \$0.01 per pound to \$0.009 per pound.

DATES: Effective May 24, 2002; comments received by July 22, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States

Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280. Comments will be available for public inspection at this location during regular business hours between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280; telephone number (202) 205-0567.

SUPPLEMENTARY INFORMATION: In accordance with Section 759 of the Appropriations Act (Pub. L. 107-76; 7 U.S.C. 511s), USDA conducted referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favored the mandatory grading of that kind of tobacco.

A notice of referenda was published in the **Federal Register** on March 5, 2002 (67 FR 9895) together with a final rule establishing procedures for the referenda. The USDA's Farm Service Agency (FSA) certified the results of the referenda on March 27, 2002, and April 3, 2002.

A majority of producers voting in the referenda favored the mandatory grading of flue-cured tobacco, types 11, 12, 13, and 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; and dark air-cured tobacco, types 35 and 36.

Producers of cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55 did not approve mandatory grading.

The Appropriations Act provided that, if a majority of the producers voting in the referenda favored the mandatory grading of that kind, USDA was directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA was also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees must be established, collected, and used in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

In this interim final rule, AMS is amending 7 CFR part 29, subpart B, regulations, to provide for mandatory grading at places other than designated tobacco auction markets. The regulations prior to the effective date of this interim rule only required grading of tobacco that was sold at auction on designated markets as set forth in § 29.8001. The regulations are amended in this rule to include producer tobacco sold at locations (receiving stations) where tobacco is offered for marketing or shipment into commerce, other than at designated auction markets. Additionally, the regulations are amended, at subpart B, to reference the implementing authority contained in the Appropriations Act. The Tobacco Inspection Act will continue to be referenced for kinds of tobacco sold at auction on designated markets not required under the Appropriations Act.

In the past, producers sold almost all of their tobacco at auction on designated markets. Last year, most producer tobacco was sold under contract and was delivered to receiving stations operated by buying concerns. Some of this tobacco was graded under the permissive grading program.

This rule adds a definition of "receiving station" as meaning "Points at which producer tobacco is offered for marketing (other than sale at auction on a designated market), including tobacco auction warehouses, packing houses, prizeeries, or places where tobacco is handled or stored." This definition is intended to be flexible enough to cover the circumstances in which producer tobacco may be marketed.

Also, the regulations are amended to provide for proper display of tobacco, adequate space to perform inspections at receiving stations and the issuance of an inspection certificate. The requirements are similar to those at auction markets but are flexible because conditions will differ at the receiving stations. When the tobacco is inspected or graded by the receiver, the tobacco must be made available for mandatory inspection at the same time and at the same location within the receiving station. In order to provide a meaningful service to growers, who are paying for the inspection service, it is necessary to require the proper display of the tobacco and to require that the mandatory inspection be conducted at the same time and under the same conditions as

any other inspections, and that the results be readily available to the producer. It is also necessary to provide that, as at auction markets, no one may interfere with the inspector in the process of grading tobacco.

The user fee for mandatory inspection of tobacco was increased from \$.0083 to \$.0100 per pound in 2001 to cover the costs of performing grading services and to maintain an adequate reserve to cover program financial responsibilities. During the 2001 crop-year, the Department only graded 31 percent of the total amount of tobacco marketed. However, with the adoption of mandatory grading of all tobacco, except cigar types, approximately 98 percent of tobacco marketed will require federal grading for the 2002 and subsequent crop years.

As a result of resources being more efficiently utilized over a larger geographical area and the additional revenue generated, the Department will reduce the user fee from \$.010 to \$.009 per pound. The reduced fee was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 16, 2002.

The AMS reviews its user fee programs annually to determine if fees are adequate. The most recent review determined that the existing fee schedule was more than adequate for the 2002 crop-year and would exceed the target level for the operating reserve balances.

Due to an estimated 69 percent increase in tobacco to be inspected for the 2002 crop-year, obligations are estimated at \$10,152,000 and revenues are expected to be \$8,503,000 for a loss of \$1,649,000. An analysis of available data indicates that a fee of \$.009 per pound would result in maintaining the operating reserve balance at \$6,279,000 for the 2002 crop-year and \$4,357,000 for the 2003 crop-year which is adequate to meet financial obligations.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the tobacco marketing season will begin on July 1 and this action is needed, as soon as possible, to fulfill the requirements of the statute to implement mandatory grading for the 2002 marketing season. Operators of receiving stations need to know as soon as possible what requirements they must meet so that orderly marketing is not disrupted. Billing systems and programs must be in place at receiving stations and auction markets to apply the reduced fees at the beginning of the

marketing season. This interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to the finalization of this rule.

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 12.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are about 190 tobacco warehouses and about 450,000 tobacco producers. There will also be about 35 receiving stations, most of which will be operated under contract at former tobacco auction warehouses and a few of which will be operated at tobacco auction warehouses. These would also be small businesses. It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule are the minimum necessary for the implementation of the requirements of the Appropriations Act for the mandatory inspection of tobacco. The provisions are similar, but somewhat more flexible, that the requirements for the inspection and certification of tobacco sold at auction on designated markets, which have previously been determined not to have a significant economic impact on a substantial number of small entities.

The information collection requirements that appear in Part 29 have been previously approved by the Office of Management and Budget under OMB Control No. 0581-0056.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B is revised to read as follows:

Authority: 7 U.S.C. 511m, 511r, and 511s.

2. Section 29.40 is revised to read as follows:

§ 29.40 Mandatory inspection.

Inspection authorized or required under section 5 of the Act or Section 759 of the Appropriations Act.

3. A new § 29.41 is added under the undesignated centerheading "Definitions" to read as follows:

§ 29.41 The Appropriations Act.

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107-76).

4. A new § 29.42 is added under the undesignated centerheading "Definitions" to read as follows:

§ 29.42 Receiving station.

Points at which producer tobacco is offered for marketing (other than sale at auction on a designated market), including tobacco auction warehouses, packing houses, prizeries, or places where tobacco is handled or stored.

5. Section 29.71 is revised to read as follows:

§ 29.71 Mandatory inspection.

Mandatory inspection consists of:
(a) Inspecting and certifying tobacco under the Act on designated markets before it is offered for sale at auction; or
(b) Inspecting and certifying tobacco at receiving stations under the Appropriations Act at the time the tobacco is delivered for sale.

6. Section 29.72 is revised to read as follows:

§ 29.72 Where mandatory inspection is required.

(a) *Auction.* All tobacco offered for sale at auction on a market designated in accordance with the Act and § 29.73 shall be inspected and certificated under the Act upon the date specified by the Secretary in public notice of such designation, and thereafter, except when

the requirement of such inspection and certification is temporarily suspended by the Deputy Administrator in accordance with the Act and the regulations in this subpart.

(b) *Other.* Tobacco of the kinds specified below offered for sale by the producers thereof at receiving stations shall be inspected and certificated under the Appropriations Act at the time of delivery and prior to change of ownership. The specified kinds are flue-cured tobacco, types 11, 12, 13, and 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; and dark air-cured tobacco, types 35 and 36.

7. In § 29.75, paragraph (a) is revised and a new paragraph (e) is added to read as follows:

§ 29.75 Accessibility of tobacco.

(a) All tobacco subject to mandatory inspection shall be made readily accessible for inspection.

* * * * *

(e) Each receiving station operator shall make tobacco accessible to the inspector for proper examination including any necessary display in adequate light for determination of grade, class, type, or other characteristics.

8. A new § 29.75c is added to read as follows:

§ 29.75c Display of tobacco at receiving stations.

Each lot of tobacco delivered for sale at receiving stations and transferred to a conveyor system for unloading shall maintain a distance between adjacent lots of not less than 18 inches during the inspection process. The platform area used for examination with a conveyor system shall be a minimum of 4 × 4 feet. Any lots of tobacco displayed in a manner other than a conveyor system shall maintain a minimum clearance of 18 inches on all sides. If the tobacco is inspected or graded by the recipient, it shall be made available for mandatory inspection at the same time and location within the receiving station.

9. Section 29.81 is revised to read as follows:

§ 29.81 Interference with inspectors.

(a) *Auction.* (1) No person, including the owner, producer, warehouseman, purchaser, agent, or employee thereof shall attempt, in any manner, to influence an inspector with respect to the grade designation of tobacco, or impede, in any manner, an inspector while the inspector is in the process of grading tobacco on the warehouse

auction floor, or ask any question or discuss any matter pertaining to the grading of tobacco while the inspector is grading any tobacco on the warehouse auction floor. While inspectors are engaged in grading the day's sale, all requests for information concerning the grade designation on or requests to review the grade of any lot of tobacco shall be made only to the head grader or to the market supervisor grader.

(2) In the event that the head grader or market supervisor grader determines that a person has violated any provision of this section, inspection ticket(s) if already issued on the lot(s) of unsold tobacco involved shall be null and void and no further inspection shall be performed on such lot(s) offered for sale by the warehouseman in whose premises the violation occurred until the next regularly-scheduled sale for such warehouse: Provided, That if violation consists of talking to the inspector while he/she is grading the tobacco, a warning shall be given on first offense and penalty provisions shall apply on any subsequent offense. A reduction in daily sales for any warehouse resulting from a violation of this section shall not prevent the maximum number of lots or pounds allotted per day per set of buyers from being sold in a designated market.

(b) *Other.* No person, including the owner, producer, receiving station operator, purchaser, agent, or employee thereof shall attempt, in any manner, to influence an inspector with respect to the grade designation of tobacco, or impede, in any manner, an inspector while the inspector is in the process of grading tobacco.

(c) *Administrative Remedies.* The provisions of this section shall not preclude the application of other administrative remedies or the institution of criminal proceedings in appropriate cases as provided by the Act.

10. In § 29.123, paragraph (a) is revised to read as follows:

§ 29.123 Fees and charges.

* * * * *

(a) *Mandatory inspection.* The inspection and certification fee is \$0.009 per pound. The fee shall be paid by sellers of tobacco and assessed against the warehouse or receiving station operator irrespective of ownership or interest in the tobacco. When the warehouse or receiving station operator pays the Department, it is presumed the fee was collected from the seller. Inspection and related services shall be suspended or denied if the warehouse or receiving station operator fails to pay the fees and charges imposed under this

section. The fee shall be based on total poundage of tobacco inspected and sold during each calendar month. The fee shall be due and payable on the first day of the immediately following month and on the day immediately following the last sale each marketing year.

Mandatory inspection and certification services shall take precedence over permissive inspections, other than reinspections.

* * * * *

Dated: May 17, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02-12892 Filed 5-22-02; 3:21 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-355-AD; Amendment 39-12756; AD 2002-10-10]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect cracks in various areas of the fuselage internal structure, and repair, if necessary. This amendment adds new repetitive inspections for cracking of certain areas of the upper chord of the upper deck floor beams, and repair, if necessary. This amendment is prompted by the results of fatigue testing that revealed severed upper chords of the upper deck floor beams due to fatigue cracking. The actions specified by this AD are intended to prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

DATES: Effective June 27, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of June 27, 2002.

The incorporation by reference of Boeing Service Bulletin 747-53-2349, dated June 27, 1991, as listed in the regulations, was approved previously by

the Director of the Federal Register as of June 11, 1993 (58 FR 27927, May 12, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1153; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93-08-12, amendment 39-8559 (58 FR 27927, May 12, 1993), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on November 27, 2001 (66 FR 59180). The action proposed to continue to require repetitive inspections to detect cracks in various areas of the fuselage internal structure, and repair, if necessary. The action also proposed to add new repetitive inspections for cracking of certain areas of the upper chord of the upper deck floor beams, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Clarify Note 3

Two commenters ask that Note 3 of the proposed rule be changed for clarification. The commenters note that the section titled "Differences Between Proposed AD and Revision 1 of the Alert Service Bulletin" states that the proposed AD would not require the high frequency eddy current inspection of the left and right sides of the upper deck floor beam at body station 380 between buttock lines 40 and 76 because it was mandated in AD 2000-04-17, amendment 39-11600 (65 FR 10695, February 29, 2000). The commenters state that Note 3 addresses only inspections that were done before the effective date of this AD, not any subsequent inspections done per AD 2000-04-17.

The FAA agrees that, for this area, the high frequency eddy current inspections required by AD 2000-04-17, done before AND after the effective date of this AD, meet the intent of this AD. Therefore, Note 3 of this final rule has been changed for clarification.

Change Paragraph (d)(2)

One commenter (the manufacturer) asks that paragraph (d)(2) of the proposed rule be changed for clarification. The commenter notes that the inspections for Group 3 airplanes are located in sections 41, 42, AND 44 upper deck floor beams.

We agree with the commenter. The proposed rule specifies inspections of Area 1, and, as information only, included the sections in that area (sections 41 and 42 upper deck floor beams from body stations 380 through 1100 inclusive). However, for Group 3 airplanes, section 44 is also part of Area 1, so we have added that section to paragraph (d)(2) of this final rule for clarification.

Change Paragraph (d)

One commenter asks that the inspection specified in paragraph (d) of the proposed rule be changed to include a provision for airplanes that have been modified to a stretched upper deck configuration. This modification involves installation of new upper deck floor beams from body stations 380 through 1100 inclusive. The commenter states that the initial inspection for these airplanes should not have to be done until 22,000 flight cycles AFTER incorporation of the upper deck modification.

We do not agree with the commenter. Due to the fact that these airplanes have many different configurations, the commenter must provide sufficient technical data justifying that the increased risk associated with extending the compliance time is insignificant. If such data are submitted, we will consider approving the commenter's request as an alternative method of compliance (AMOC), as provided in paragraph (h)(1) of this final rule. No change to the final rule is necessary in this regard.

Change Paragraph (a)

One commenter asks that additional requirements be added following paragraph (d) of the proposed rule to require that, at 22,000 total flight cycles or 3,000 flight cycles after the last inspection required by AD 93-08-12, the next inspection of the locations described in paragraphs (a)(2) through (a)(7) of the proposed rule be done per Revision 1 of the service bulletin. The

commenter also asks that, at 25,000 total flight cycles or 3,000 flight cycles after the last inspection required by AD 93-08-12, the next inspection of the location described in paragraph (b) of the proposed rule be done per Revision 1 of the service bulletin. The commenter states that this would terminate all inspections required by paragraphs (a)(1) through (a)(7) and paragraph (b) of the proposed rule. The commenter notes that Revision 1 of the service bulletin adds improvements such as new access procedures to allow better inspections of Area 3, section 46, lower lobe frames, and Area 6, main entry door cutouts.

We do not agree with the commenter. We have determined that the access procedures specified in the original issue of the service bulletin provide for adequate inspections. We also have determined that the improvements in Revision 1 of the service bulletin do not need to be mandated to meet the intent of the proposed rule. It should be noted that Revision 1 has been approved as an AMOC to AD 93-08-12. No change to the final rule is necessary in this regard.

Change Paragraph (h)(2)

One commenter asks that paragraph (h)(2) of the proposed rule be changed to consider AMOCs approved previously in accordance with AD 93-08-12 to be approved for compliance with paragraphs (a) and (b) of the proposed rule ONLY.

We do not agree with the commenter. We have reviewed all existing AMOCs and have determined that continued approval of these AMOCs will not compromise the intent of the proposed rule. No change to the final rule is necessary in this regard.

Change Paragraph (g)

One commenter asks that paragraph (g) of the proposed rule be changed to add a requirement to repair any cracking found during the inspections required by paragraphs (a) and (b) of the proposed rule, in addition to the inspections required by paragraphs (d) and (e), and to include any new paragraphs added.

We do not agree with the commenter. Paragraph (c) of the proposed rule addresses the repairs for paragraphs (a) and (b) of the proposed rule. In addition, no new paragraphs will be added after paragraph (d) of the final rule, as specified in our response in the request to change paragraph (a), above. No change to the final rule is necessary in this regard.

Change Preamble

One commenter asks that certain wording in the preamble of the

proposed rule be changed. The commenter states that the wording in the section titled "Explanation of Relevant Service Information" should be changed from "eliminate the need for the existing inspections," to "replace the existing inspections." The commenter also asks that the wording in the section titled "Explanation of Requirements of the Proposed Rule" be changed from "Since an unsafe condition has been identified," to "Since a potential unsafe condition has been identified."

We acknowledge and agree with the commenter's remarks on the preamble of the proposed rule; however, the sections referred to are not restated in this final rule. Therefore, no change to the final rule is necessary in this regard.

Alternative Inspection

One commenter asks that a detailed visual inspection from below the upper deck floor beams between body stations 1020 and 1100 be approved as an alternative inspection method to meet the detailed visual inspection requirements for Group 3 airplanes specified in the proposed rule. The commenter states that this alternative inspection method is specified in Note 1 of Step 1, Figure 2, of the Accomplishment Instructions of Revision 1 of the referenced service bulletin.

We do not agree with the commenter. The note in Step 1, Figure 2, of the service bulletin is limited to floor beams between body stations 260 and 330. We disagree that inspections from below will provide an equivalent level of safety for the floor beams located between body stations 1020 and 1100. However, if data are submitted that provide procedures for an alternative inspection program that will offer an acceptable level of safety, we would consider this under the provisions for an AMOC, as provided in paragraph (h)(1) of this final rule. No change to the final rule is necessary in this regard.

Explanation of Change to Final Rule

Since the issuance of the proposed rule, the FAA has found that the identification of affected airplanes in the preamble of the proposed rule needs further clarification. Therefore, we have changed the preamble to specify "certain Boeing Model 747 series airplanes," instead of listing out each model. This change is made for consistency with the effectivity of the service bulletin, which is listed in the applicability section within the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until similar action for Boeing Model 747-400 series airplanes and 747 freighter airplanes is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 489 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 181 airplanes of U.S. registry are subject to the existing AD. The actions that are currently required by AD 93-08-12 take approximately 1,746 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be \$104,760 per airplane.

We estimate that 155 airplanes of U.S. registry are subject to the new actions in this AD. The new inspections that are required by this AD action will take approximately 255 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be \$2,371,500, or \$15,300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. Section 39.13 is amended by removing amendment 39-8559 (58 FR 27927, May 12, 1993), and by adding a new airworthiness directive (AD), amendment 39-12756, to read as follows:

2002-10-10 Boeing: Amendment 39-12756. Docket 2000-NM-355-AD. Supersedes AD 93-08-12, Amendment 39-8559.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747-53-2349, dated June 27, 1991, or Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, 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 (h)(1) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane, do the following:

Restatement of Requirements of AD 93-08-12

Repetitive Inspections

(a) Prior to the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after June 11, 1993 (the effective date of AD 93-08-12, amendment 39-8559), whichever occurs later, unless accomplished previously within the last 2,000 flight cycles; and thereafter at intervals not to exceed 3,000 flight cycles: Perform a detailed internal inspection to detect cracks in the areas of the fuselage internal structure specified in paragraphs (a)(1) through (a)(7) of this AD; in accordance with Boeing Service Bulletin 747-53-2349, dated June 27, 1991.

(1) Sections 41 and 42 upper deck floor beams.

(2) Section 42 upper lobe frames.

(3) Section 46 lower lobe frames.

(4) Section 42 lower lobe frames.

(5) Main entry door cutouts.

(6) Section 41 body station 260, 340, and 400 bulkheads.

(7) Main entry doors.

(b) Prior to the accumulation of 25,000 total flight cycles, or within 1,000 flight cycles after June 11, 1993, whichever occurs later, unless accomplished previously within the last 2,000 flight cycles; and thereafter at intervals not to exceed 3,000 flight cycles: Perform a detailed internal inspection to detect cracks in the Section 46 upper lobe frames, in accordance with Boeing Service Bulletin 747-53-2349, dated June 27, 1991.

Repair

(c) Prior to further flight, repair any cracks detected during the inspections done per paragraph (a) or (b) of this AD, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

New Requirements of This AD

Repetitive Inspections

(d) Before the accumulation of 22,000 total flight cycles, or within 3,000 flight cycles after doing the most recent inspection required by paragraph (a) of this AD, whichever occurs later: Do a detailed inspection to find cracking in the areas specified in paragraph (d)(1) or (d)(2) of this AD, as applicable, per Figure 2 of the Accomplishment Instructions of Boeing Alert

Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000. Repeat the inspection after that every 3,000 flight cycles. Doing this inspection terminates the inspections required by paragraph (a) of this AD in the area specified in paragraph (a)(1) of this AD only.

(1) For Groups 1, 2, 4, and 5 airplanes: Do the inspections of Area 1 (sections 41 and 42 upper deck floor beams), including existing repairs and modifications.

(2) For Group 3 airplanes: Do the inspections of Area 1 (sections 41, 42, and 44 upper deck floor beams from body stations 380 through 1100 inclusive), including existing repairs and modifications.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(e) Before the accumulation of 28,000 total flight cycles, or within 3,000 flight cycles after doing the most recent inspection required by paragraph (a) of this AD, whichever occurs later: Do a high frequency eddy current (HFEC) inspection to find cracking of the open holes in the horizontal flanges of the upper chord of each upper deck floor beam in the areas specified in paragraph (e)(1) or (e)(2) of this AD, as applicable, per the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000. Do the inspection per "Inspection Alternatives," as specified in Sheet 7 of Figure 2 of the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection according to the "Repeat Inspection Intervals," specified in Sheet 7 of Figure 2 of the Accomplishment Instructions of the service bulletin.

(1) For Group 1, 2, 4, and 5 airplanes: Do the inspections at the applicable locations (BS 380 through BS 780 inclusive for Groups 1, 2, and 4, BS 380 through BS 860 inclusive for Group 5) as specified in Sheet 7 of Figure 2.

(2) For Group 3 airplanes: Do the inspections as specified in Sheet 7 of Figure 2, at the upper deck floor beams from BS 380 through BS 1100 inclusive.

Note 3: HFEC inspections of the left and right sides of the upper deck floor beam at body station 380, between buttock lines 40 and 76, done per AD 2000-04-17, amendment 39-11600, are considered acceptable for compliance with the applicable inspections specified in paragraph (e) of this AD.

Adjustments to Compliance Time: Cabin Differential Pressure

(f) For the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraphs (d) and (e) of this AD: For Area 1 only, the number of flight cycles in which cabin differential

pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane: NO fleet-averaging of cabin pressure is allowed.

Repair

(g) Before further flight, repair any cracking found during the inspections done per paragraphs (d) and (e) of this AD, according to Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000. Where the service bulletin specifies to contact Boeing for repair instructions, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance and FAA-approved repairs, approved previously in accordance with AD 93-08-12, amendment 39-8559, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (c), (f), and (g) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747-53-2349, dated June 27, 1991; and Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000, as listed in the regulations, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 747-53-2349, dated June 27, 1991, was approved previously by the Director of the Federal Register as of June 11, 1993 (58 FR 27927, May 12, 1993).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on June 27, 2002.

Issued in Renton, Washington, on May 14, 2002.

Vi L. Lipski,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 02-12635 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-NM-359-AD; Amendment 39-12757; AD 2002-10-11]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires repetitive inspections for cracking and corrosion of the pressure bulkhead at body station (BS) 1016, and follow-on actions. This amendment expands the applicability of the existing AD, and requires new repetitive inspections to detect cracking and corrosion of the aft pressure bulkhead at BS 1016, and follow-on actions. This action is necessary to detect and correct corrosion or cracking of the aft pressure bulkhead at BS 1016, which could result in loss of the aft pressure bulkhead web and stiffeners and consequent rapid decompression of the fuselage. This action is intended to address the identified unsafe condition.

DATES: Effective June 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scott Fung, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1221; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 84-20-03 R1, amendment 39-5183 (50 FR 51235, December 16, 1985), which is applicable to certain Boeing Model 737 series airplanes, was published in the **Federal Register** on November 19, 2001 (66 FR 57908). The action proposed to expand the applicability of the existing AD and require new repetitive inspections to detect cracking and corrosion of the aft pressure bulkhead at body station 1016, and follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter has no objection to the proposed rule. One commenter agrees with the intent of the proposed rule.

Extend Compliance Time

One commenter asks that the compliance time specified in paragraph (e)(3) of the proposed rule be extended by adding the following, "Do the inspection within 6 years since airplane's date of manufacture, or within 4 years after doing tasks C53-701-01.01 and C53-202-01 (reference Boeing Documents D6-38528 or D6-38278), or within 2 years after the effective date of this AD, whichever occurs later." The compliance time in paragraph (e)(3) now specifies, "Do the inspection within 6 years since the airplane's date of manufacture, or within 2 years after the effective date of this AD, whichever occurs later." The commenter states that review of the corrosion reports submitted to the manufacturer show very few corrosion findings on the aft pressure bulkhead. The commenter notes that this indicates that the Corrosion Prevention and Control Program (CPCP) is managing corrosion on the bulkhead. The commenter adds that periodic corrosion

findings necessitate doing specific inspections; so, due to CPCP requirements for similar inspections, operators should be able to take credit for past inspections per the referenced Boeing documents.

The same commenter asks that the repetitive inspections specified in paragraph (f) of the proposed rule be extended to at least every four years, in lieu of every two years. The commenter states that the primary difference for the aft pressure bulkhead structure between the pre-line number 1043 airplanes and the post-line number 1043 airplanes is the lack of application of corrosion inhibiting compound (CIC) on the drain holes during manufacture. The commenter adds that because the drain hole issue is addressed and CICs are applied per the proposed rule, inspections of all affected airplanes should be repeated at the same 4-year interval.

The FAA does not agree with the commenter's requests, as insufficient supporting data were provided to us to substantiate those requests. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

In addition, the comment stating that the primary difference for the aft pressure bulkhead structure between the pre-line number 1043 airplanes and the post-line number 1043 airplanes is the lack of application of corrosion inhibiting compound (CIC) on the drain holes during manufacture is incorrect. Post-line number airplanes have additional drain hole provisions that justify the extended intervals; those provisions do not exist for the pre-line number airplanes. However, under the provisions of paragraph (h)(1) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 2,920 airplanes of the affected design in the worldwide fleet.

We estimate that 337 airplanes of U.S. registry are subject to the existing AD. The inspections that are currently required by AD 84-20-03 R1 take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be \$40,440, or \$120 per airplane, per inspection cycle.

The drain hole enlargement that is currently required by AD 84-20-03 R1 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be \$40,440, or \$120 per airplane.

We estimate that 1,143 airplanes of U.S. registry will be affected by this AD. The new inspections that are required in this AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of these new requirements on U.S. operators is estimated to be \$274,320, or \$240 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. Section 39.13 is amended by removing amendment 39-5183 (50 FR 51235, December 16, 1985), and by adding a new airworthiness directive (AD), amendment 39-12757, to read as follows:

2002-10-11 Boeing: Amendment 39-12757. Docket 2000-NM-359-AD. Supersedes AD 84-20-03 R1, Amendment 39-5183.

Applicability: Model 737-100, -200, -200C, -300, -400, and -500 series airplanes; line numbers (L/N) 1 through 3132 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, 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 (h)(1) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion or cracking of the aft pressure bulkhead at Body Station (BS) 1016, which could result in loss of the aft pressure bulkhead web and stiffeners and consequent rapid decompression of the fuselage, accomplish the following:

Restatement of Requirements of AD 84-20-03 R1

Initial Inspection

(a) For Model 737 series airplanes with L/N 1 through 929 inclusive, with more than 20,000 hours time-in-service or 7 years since date of manufacture, whichever occurs first: Within 120 days after January 20, 1986 (the effective date of AD 84-20-03 R1, amendment 39-5183), unless already accomplished within the 21 months before January 20, 1986, visually inspect the BS 1016 pressure bulkhead for cracking and corrosion; according to Boeing Alert Service Bulletin 737-53A1075, Revision 1, dated September 2, 1983; Revision 2, dated July 13, 1984; or Revision 3, dated June 8, 2000. Remove any obstruction to the drain hole in the frame chord and replace any deteriorated leveling compound as noted in the service bulletin. Treat the area of inspection with corrosion inhibitor BMS 3-23, or equivalent.

Drain Hole Enlargement

(b) For airplanes identified in paragraph (a) of this AD: Within 1 year after January 20, 1986, accomplish the drain hole enlargement as shown in Boeing Alert Service Bulletin 737-53A1075, Revision 1, dated September 2, 1983; Revision 2, dated July 13, 1984; or Revision 3, dated June 8, 2000.

Corrective Action

(c) If cracking or corrosion is found during any inspection required by paragraph (a) or (d) of this AD, before further flight, repair according to paragraph (c)(1) or (c)(2) of this AD.

(1) According to Boeing Alert Service Bulletin 737-53A1075, Revision 1, dated September 2, 1983; Revision 2, dated July 13, 1984; or Revision 3, dated June 8, 2000.

(2) According to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Repetitive Inspections

(d) For airplanes identified in paragraph (a) of this AD: Repeat the visual inspections and corrosion inhibitor treatment in paragraph (a) at intervals not to exceed 2 years, until paragraph (e) of this AD has been done.

New Requirements of This AD

Initial Inspection

(e) Do a detailed inspection for cracking or corrosion of the aft pressure bulkhead at BS 1016 (including the forward and aft sides of the pressure web, forward and aft sides of the pressure chord, pressure chord radius, forward and aft sides of the angle stiffener, forward and aft chord, stringer end fitting, system penetration doublers, channel stiffeners and fasteners, "Z" stiffeners and fasteners, and fasteners common to the pressure chord and pressure web), according

to Boeing Alert Service Bulletin 737–53A1075, Revision 3, dated June 8, 2000. Do this inspection at the applicable time shown in paragraph (e)(1), (e)(2), or (e)(3) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

(1) For airplanes on which an inspection has previously been done according to the requirements of paragraph (a) of this AD: Do the inspection within 2 years since the most recent inspection according to paragraph (a) or (d) of this AD, as applicable. Inspection according to paragraph (e) of this AD ends the requirement for inspections according to paragraph (d) of this AD.

(2) For airplanes having L/N 930 through 1042 inclusive, on which an inspection has not previously been done according to paragraph (a) of this AD: Do the inspection within 2 years after the effective date of this AD.

(3) For airplanes having L/N 1043 through 3132 inclusive, on which an inspection has not previously been done according to paragraph (a) of this AD: Do the inspection within 6 years since the airplane's date of manufacture, or within 2 years after the effective date of this AD, whichever occurs later.

Repetitive Inspections

(f) Repeat the inspection in paragraph (e) of this AD at the applicable time shown in paragraph (f)(1) or (f)(2) of this AD.

(1) For airplanes having L/N 1 through 1042 inclusive: Repeat the inspection at least every 2 years.

(2) For airplanes having L/N 1043 through 3132 inclusive: Repeat the inspection at least every 4 years.

Repair

(g) If any corrosion or cracking is found during any inspection according to paragraph (e) or (f) of this AD: Before further flight, repair according to Boeing Alert Service Bulletin 737–53A1075, Revision 3, dated June 8, 2000. Exception: If corrosion or cracking of the web and stiffeners is outside the limits specified in the service bulletin, or if corrosion or cracking is found in any structure not covered by the repair instructions in the service bulletin, before further flight, repair according to a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 84–20–03 R1, amendment 39–5183, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (c)(2) and (g) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–53A1075, Revision 1, dated September 2, 1983; Boeing Alert Service Bulletin 737–53A1075, Revision 2, dated July 13, 1984; or Boeing Alert Service Bulletin 737–53A1075, Revision 3, dated June 8, 2000, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on June 27, 2002.

Issued in Renton, Washington, on May 14, 2002.

Vi L. Lipski,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 02–12634 Filed 5–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–394–AD; Amendment 39–12758; AD 2002–10–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. For certain airplanes, this amendment requires a one-time inspection or a review of the maintenance records of the airplane to determine if a particular control rod barrel for the aileron tabs is installed, and follow-on repetitive inspections for cracking of the control rod barrels and replacement of the control rod barrels with new barrels, if necessary. Such replacement terminates the repetitive inspections. For all airplanes, this amendment prohibits installation of a certain control rod barrel for the aileron tabs. The actions specified by this AD are intended to prevent the disconnection of an aileron tab, which could lead to severe airframe vibrations; consequent damage to the aileron tab, aileron, and wing; and possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2186; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published in the **Federal Register** on September 4, 2001 (66 FR 46247). For certain airplanes, that action proposed to require a one-time inspection or a review of the maintenance records of the airplane to determine if a particular control rod barrel for the aileron tabs is

installed, and follow-on repetitive inspections for cracking of the control rod barrels and replacement of the control rod barrels with new barrels, if necessary. Such replacement would terminate the repetitive inspections. For all airplanes, that action proposed to prohibit installation of a certain control rod barrel for the aileron tabs.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Compliance Time

One commenter asks that the compliance time specified in paragraph (b)(1) of the proposed rule be changed from flight cycles to flight hours. That paragraph specifies repeating the inspections of the control rod barrels at least every 3,200 flight cycles, and replacing the affected control rod barrels within 20,000 flight cycles. The commenter states that Boeing Special Attention Service Bulletin 737-27-1223, dated October 21, 1999, specifies repeating those inspections every 3,200 flight HOURS, and replacing affected control rod barrels within 20,000 flight HOURS.

The FAA agrees with the commenter. Our intent in the proposed rule was to mandate the compliance time specified in service bulletin. Since we did not intend to use flight cycles, and did not include a difference paragraph declaring our intent to use flight cycles, this change does not expand the scope of the final rule. We have changed paragraph (b)(1) of this final rule accordingly.

Clarify Paragraph (b)(2)

One commenter asks for clarification of paragraph (b)(2) of the proposed rule. The commenter states that the paragraph specifies replacement of all control rod barrels if any cracking is found. The commenter notes that, per data received from the manufacturer, the gray colored control rod barrels do not need to be replaced even if the white control rod barrels are found cracked.

We agree with the commenter. We have changed paragraph (b)(2) of the final rule for clarification to read, "If any cracking is found, before further flight, replace all AFFECTED control rod barrels * * *."

Extend Repetitive Inspection Interval

One commenter states that the repetitive inspection interval specified in paragraph (b)(1) of the proposed rule would not allow operators sufficient

time to first complete the initial inspection of the control rod barrels before doing the repeat inspections without scheduling aircraft down-time. The commenter asks that the interval be extended to 6,000 flight hours.

We do not agree with the commenter because it provided no justification for its request and no data to support that its suggestion would provide an acceptable level of safety were submitted. The specified repetitive interval is based on the recommendation of the manufacturer and on the schedule of the majority of operators. However, the commenter may apply for an approval of an alternate method of compliance, in accordance with paragraph (e) of this AD. No change is made to the final rule in this regard.

Alternate Method of Compliance

One commenter asks that an X-ray or ultrasound inspection be allowed as an alternate to replacing the affected control rod barrels. The commenter states that these inspections would reveal defects without relying on the color of the paint; then, only the control rod barrels with such defects would be replaced, instead of all affected control rod barrels. The commenter adds that the control rod barrels also would be permanently marked after they are inspected, which would eliminate the need for removal and subsequent flight test.

The FAA does not agree with the commenter. No reliable method of inspecting for the defect in the control rod barrels has been submitted to the FAA, so no approval can be given for such inspections. In addition, the commenter did not provide sufficient technical details for the proposed inspections. However, we would consider this option under the provisions for requesting approval of an alternate method of compliance, as provided in paragraph (e) of this final rule, if substantiating data are provided. No change is made to the final rule in this regard.

Change Cost Impact

One commenter states that the labor estimates in the proposed rule do not agree with the estimates in the referenced service bulletin. The commenter notes that there are a large number of fasteners that must be removed before removal of the panel that allows access to the control rod barrels, and a flight test is required if the rods are replaced or the adjustment is changed. The commenter adds that, although incidental costs are not included in the cost basis for

rulemaking, the access requirements and flight test are not incidental and should be included in the cost analysis of the final rule.

We do not agree with the commenter. The cost impact information describes only the "direct" costs of the specific actions required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time necessary to gain access to the control rod barrels and to perform a flight test. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change is made to the final rule in this regard. We note that a flight test is only necessary if all four rod barrels are replaced.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,900 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,250 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the inspection to determine the color of the control rod barrels for the aileron tabs or the review of maintenance records, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection or review required by this AD on U.S. operators is estimated to be \$75,000, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

If subject control rod barrels are installed, it will take approximately 1 work hour per airplane to accomplish the follow-on inspections, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the follow-on inspections is estimated to be \$60 per airplane, per inspection cycle.

If subject control rod barrels are installed, it will take approximately 2 work hours per airplane to replace each control rod barrel, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this replacement is estimated to be \$120 per airplane. Up to four control rod barrels (two for each aileron) may need to be replaced on each airplane.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. Section 39.13 is amended by adding the following new airworthiness directive:

2002–10–12 Boeing: Amendment 39–12758. Docket 2000–NM–394–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a disconnected aileron tab, which could lead to severe airframe vibrations; consequent damage to the aileron tab, aileron, and wing; and loss of controllability of the airplane; accomplish the following:

One-Time Inspection

(a) Within 3,200 flight hours after the effective date of this AD, do paragraph (a)(1) or (a)(2) of this AD.

(1) Do a one-time general visual inspection to determine whether an aileron tab control rod barrel having part number 69–60083–1 is installed by determining the color of the control rod barrels, according to Boeing Special Attention Service Bulletin 737–27–1223, dated October 21, 1999. No further action is required by this AD for gray-colored control rod barrels. If any white-colored control rod barrel with part number 69–60083–1 is installed, or if the color or part number of any control rod barrel cannot be determined, do paragraph (b) of this AD.

(2) Review the maintenance records for the airplane to determine whether an aileron tab control rod barrel having part number 69–60083–1 is installed. If no control rod barrel with that part number is installed, no further action is required by this AD. If any control rod barrel with that part number is installed, do paragraph (b) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-On Actions: Repetitive Inspections and Replacement

(b) For airplanes that have a control rod barrel for the aileron tabs having part number 69–60083–1 or a control rod barrel on which the color or part number cannot be determined: Within 3,200 flight hours after the effective date of this AD, do a detailed inspection for cracking of the affected control rod barrels according to Boeing Special Attention Service Bulletin 737–27–1223, dated October 21, 1999.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is found, repeat the inspection for cracking at least every 3,200 flight hours, AND, within 20,000 flight hours after the effective date of this AD, replace all affected control rod barrels for the aileron tabs with new or reworked control rod barrels, according to the service bulletin. Such replacement terminates the repetitive inspections.

(2) If any cracking is found, before further flight, replace all affected (cracked, having part number 69–60083–1 or on which the color or part number cannot be determined) control rod barrels with new or reworked control rod barrels, according to the service bulletin.

Note 4: If any control rod barrel for the aileron tab is cracked, all affected control rod barrels on the airplane must be replaced at the same time because the discrepancy may exist in the entire lot of parts.

Reporting Requirement

(c) If any cracked control rod barrel for the aileron tabs is found during the inspections required by paragraph (b) of this AD, report findings to the FAA Certification Management Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (b) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Spares

(d) For all airplanes: As of the effective date of this AD, no person may install a control rod barrel for the aileron tab having part number 69–60083–1 on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 737-27-1223, dated October 21, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on June 27, 2002.

Issued in Renton, Washington, on May 14, 2002.

Vi L. Lipski,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 02-12633 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NE-04-AD; Amendment 39-12754; AD 2002-10-08]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF6-80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to General Electric Company (GE) CF6-80E1 series turbofan engines installed on Airbus Industrie A330 series airplanes. This action requires initial and repetitive thrust reverser inspections and checks, and allows extended threshold and repetitive inspection intervals for certain inspections if an optional double p-seal configuration is installed. This amendment is prompted by reports of service-induced hardware deterioration that reduces the overall thrust reverser system protection against inadvertent deployment, which can result in loss of control of the airplane. The actions specified in this AD are intended to prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane.

DATES: Effective June 27, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before July 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-NE-04-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220-4295, attn: Warranty Support, telephone: (410) 682-0094, fax: (410) 682-0100. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Office Park; telephone (781) 238-7192; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA has determined that thrust reverser inspections and checks are necessary as

precautionary actions, to provide an acceptable level of safety for GE CF6-80E1 series turbofan engines. This determination has been made after reviewing thrust reverser safety analyses following a report of inadvertent thrust reverser deployment on another make and model engine. This amendment is prompted by the following reports:

- The translating cowl inner bondment (bulb) seal can become deformed during use in service, resulting in cuts, tears, nicks, holes, and missing sections that compromise aerodynamic stow retention.
- The forward (Dagmar) fairing and the aft frame assembly can become damaged during use in service, compromising stow retention.
- The center drive unit (CDU) cone brake holding torque can become less than the minimum acceptable value to the extent that the CDU cone brake becomes inoperative.
- The thrust reverser electromechanical brake holding torque can become less than the minimum acceptable value to the extent that the thrust reverser actuation system (TRAS) lock becomes inoperative. This holding torque of less than the minimum acceptable value can also be caused by damage to a flexible shaft assembly.

These conditions, if not corrected, could result in inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Middle River Aircraft Systems alert service bulletin (ASB) No. CF6-80E1 SB 78A5043, Revision 1, dated January 22, 2002 that describes procedures for initial and repetitive thrust reverser inspections and checks.

FAA's Determination of an Unsafe Condition and Required Actions

Although this affected engine model is not used on any airplanes that are registered in the United States, the possibility exists this engine model could be used on airplanes that are registered in the United States in the future. This AD is being issued to prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane. This AD requires initial and repetitive thrust reverser inspections and checks, and allows extended threshold and repetitive inspection intervals for certain inspections if an optional double p-seal configuration is installed. The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NE-04-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. Section 39.13 is amended by adding the following new airworthiness directive:

2002-10-08 General Electric Company:
Amendment 39-12754. Docket No. 2000-NE-04-AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6-80E1 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A330 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines 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 (d) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane, do the following:

Engines That Do Not Have Improved Double P-Seal Configuration

(a) For engines that do not have the improved double P-seal configuration introduced by Middle River Aircraft Systems (MRAS) service bulletin (SB) 78-5037, original issue or Revision 1, inspect and check each fan thrust reverser half in accordance with 2.B., 2.C., and 2.D. of the Accomplishment Instructions of MRAS alert service bulletin (ASB) No. 78A5043, Revision 1, dated January 22, 2002, as follows:

(1) Perform initial inspections and checks before exceeding 7,000 flight hours time-since-new (TSN) or 1,000 flight hours time-in-service (TIS), whichever occurs later, after the effective date of this AD.

(2) Thereafter, perform inspections and checks at intervals not to exceed 7,000 flight hours TIS since last inspection or check.

Engines That Do Have Improved Double P-Seal Configuration

(b) For engines that do have the improved double P-seal configuration introduced by MRAS SB 78-5037, original issue or Revision 1, inspect and check each fan thrust reverser half in accordance with 2.B. and 2.C. of the Accomplishment Instructions of MRAS ASB No. 78A5043, Revision 1, dated January 22, 2002, as follows:

(1) Perform initial inspections and checks before exceeding 25,000 flight hours TSN or 1,000 flight hours TIS, whichever occurs later, after the effective date of this AD.

(2) Thereafter, perform inspections and checks at intervals not to exceed 25,000 flight hours TIS since last inspection or check.

(c) Also for engines that do have the improved double P-seal configuration introduced by MRAS SB 78-5037, original issue or Revision 1, check each fan thrust reverser half in accordance with 2D. of the Accomplishment Instructions of MRAS ASB No. 78A5043, Revision 1, dated January 22, 2002, as follows:

(1) Perform initial check before exceeding 7,000 flight hours TSN or 1,000 flight hours TIS, whichever occurs later, after the effective date of this AD.

(2) Thereafter, perform checks at intervals not to exceed 7,000 flight hours TIS since last check.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(f) The inspections and checks must be done in accordance with Middle River Aircraft Systems Alert Service Bulletin No. CF6-80E1 SB 78A5043, Revision 1, dated January 22, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220-4295, attn: Warranty Support, telephone: (410) 682-0094, fax: (410) 682-0100. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on June 27, 2002.

Issued in Burlington, Massachusetts, on May 9, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02-12631 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NE-27-AD; Amendment 39-12753; AD 2002-10-07]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT9D-59A, -70A, -7Q, and -7Q3 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines. This amendment requires fluorescent penetrant inspection of the high pressure turbine (HPT) second stage airseal knife edges for cracks, each time the airseal is accessible. This amendment is prompted by reports of cracks found in the knife edges of HPT second stage

airseals during HPT disassembly. The actions specified by this AD are intended to prevent failure of HPT second stage airseals due to cracks in the knife edges, which if not detected could result in uncontained engine failure and damage to the airplane.

DATES: Effective June 27, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-8770; fax (860) 565-4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7130, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to PW JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines was published in the **Federal Register** on November 23, 2001 (66 FR 58691). That action proposed to require fluorescent penetrant inspection of the HPT second stage airseal knife edges for cracks, in accordance with PW service bulletin (SB) JT9D 6409, dated July 27, 2001, each time the airseal is accessible.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Make Removal Wording More Specific

One commenter suggests changing proposed paragraph (a) to be consistent with SB JT9D 6409, dated July 27, 2001. Paragraph (a) proposed that airseals found cracked must be removed from service. The commenter suggests that paragraph (a) should state that airseals that are found cracked must be removed only if the crack is beyond the limit defined in the engine manual inspection section. Another commenter points out that SB JT9D 6409, dated July 27, 2001, refers to the engine manual (EM), but

the proposal does not. The EM allows blend repair of cracks that are not located in the pedestal area of the airseal, but the proposal requires removal from service of airseals with any cracks.

The FAA agrees that the wording describing the circumstances that airseals are to be removed from service needs to be more specific. Therefore, the FAA has changed paragraph (a) to reference the return to service criteria as well as the procedures for performing the inspection contained in the Accomplishment Instructions of PW SB JT9D 6409, dated July 27, 2001.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 564 engines of the affected design PW JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines in the worldwide fleet. The FAA estimates that 176 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 1 work hour per engine to perform the fluorescent penetrant inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the total labor cost annually of the AD on U.S. operators is estimated to be \$10,560.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has

been prepared for this action and it is contained 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–10–07 Pratt & Whitney: Amendment 39–12753. Docket No. 2001–NE–27–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines 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 (b) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent failure of high pressure turbine (HPT) second stage airseals due to cracks in the knife edges, which if not detected could result in uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Perform a fluorescent penetrant inspection of the HPT second stage airseal knife edges for cracks in accordance with procedures and return to service criteria contained in Accomplishment Instructions, Paragraphs 1 through 3, of PW Service Bulletin (SB) JT9D 6409, dated July 27, 2001,

each time the HPT stage 1 and stage 2 rotors are separated. Remove from service those airseals that are determined to be unserviceable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(d) The inspection must be done in accordance with Pratt & Whitney Service Bulletin JT9D 6409, dated July 27, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on June 27, 2002.

Issued in Burlington, Massachusetts, on May 10, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–12630 Filed 5–22–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 141 and 385

[Docket No. RM02–9–000; Order No. 626]

Electronic Filing of FERC Form 1, and Elimination of Certain Designated Schedules In FERC Form Nos. 1 and 1–F

Issued: May 16, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) to provide for the electronic filing of its Form 1 (Form 1) and the elimination of certain schedules on the Form 1 and Form 1–F (Form 1–F). Commencing with the report for calendar year 2002, due April 30, 2003, only electronic filings will be accepted; the paper filing requirement will be eliminated for the Form 1. Form 1–F respondents must still submit an original and one conformed paper copy of a completed form by March 31, 2003. Also commencing with the report for calendar year 2002, for both the Forms 1 and 1–F, the schedules identified below will be eliminated. This automation of the Form 1 and the elimination of designated schedules to both the Forms 1 and 1–F yield significant benefits to respondents, the Commission and to the electric industry as a whole. These benefits include more timely analysis and publication of the data, increased data analysis capability, reduced cost of data entry and retrieval, and an overall reduction in filing burden.

EFFECTIVE DATE: This final rule is effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Morris (Technical Information), Office of Markets, Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 208–6990, patricia.morris@ferc.fed.us.

Bolton Pierce (Electronic System), Office of Information Technology, FERC, 888 First Street, NE., Washington, DC 20426, (202) 208–1803, bolton.pierce@ferc.gov.

Julia Lake (Legal Information), Office of General Counsel, FERC, 888 First Street, NE., Washington, DC 20426, (202) 208–2019, julia.lake@ferc.gov.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

I. Introduction

This Final Rule revises parts 141 and 385 of the Commission's regulations to require the electronic filing of FERC Form 1 "Annual Report of Major Electric Utilities, Licensees and Others" (Form 1) and the elimination of designated schedules from both the Form 1 and Form 1-F "Annual Report for Nonmajor Public Utilities, Licensees and Others" (Form 1-F). Beginning with reports for the calendar year 2002, due no later than April 30, 2003, there will be no further requirement for a hard copy Form 1 filing. The Commission has thoroughly tested the software and related elements of the electronic filing mechanism and finds that the methodology and mechanics of the system are ready for industry-wide electronic filing of Form 1. In addition, the Commission finds that the schedules designated below should be eliminated.

II. Background

Form 1 and 1-F information is collected pursuant to sections 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. 825c and 825h. The Commission collects general corporate information: summary financial information, balance sheet and income statement supporting information, and electric plant, sales, operating expenses, and statistical data. The information is used in the review of the financial condition of regulated companies, in various rate proceedings and in the Commission's audit program. Form 1 is filed by respondents determined to be "Major Electric Utilities" and certain hydroelectric utilities under the Commission's jurisdiction. A utility is defined as a "Major Electric Utility" if it meets one of the following requirements: (1) At least one million megawatt hours of total annual sales; (2) 100 megawatt hours of annual sales for resale; (3) 500 megawatt hours of annual power exchanges delivered; or (4) 500 megawatt hours of annual wheeling for others (deliveries plus losses). For the Form 1-F, a respondent is defined as a "Nonmajor Public Utility" if it meets the following requirement: Total annual sales of 10,000 megawatt hours or more in the three previous calendar years and is not classified as "Major." The Commission's Form 1 and 1-F filing requirements are found at 18 CFR 141.1 and 141.2.

The Forms 1 and 1-F are annual submissions from approximately 216 and 26, respectively, jurisdictional utilities and licensees.

III. Discussion

Based on a review of the Commission's need for data, and also given requests for reductions in the collections of data, the Commission is eliminating the schedules listed below:

Form 1

- Security Holders and Voting Powers (106–107).
- Construction Overheads-electric (217).
- General Description of Construction Overhead Procedure (218).
- Nonutility Property (221).
- Capital Stock Sub, Cap Stock Liability for Con, Prem. Cap Stock, & Inst Received (252).
- Discount on Capital Stock (254).
- Number of Electric Department Employees (323).
- Particulars Concerning Certain Income Deduction and Interest Charges (340).
- Electric Distribution Meters and Line Transformers (429).
- Environmental Protection Facilities (430).
- Environmental Protection Expenses (431).

Form 1-F

- Data on Security Holders and Voting Powers (Parts X and XI, P. 18).
- Nonutility Property (121, P. 110).
- Capital Stock Sub, Cap Stock Liability for Con, Prem. Cap Stock, & Inst Received (252, P. 112).
- Discount on Capital Stock (254, P. 112).
- Particulars Concerning Certain Income Deduction and Interest Charges (340, P. 117).
- Electric Distribution Meters and Line Transformers (429, lines 63 & 65, P. 206).
- Number of Electric Department Employees (P. 323).
- Construction Overheads—electric (217, P. 8 Allowance for Funds used During Construction).

On August 7, 2001, the Commission issued a Notice of Proposed Information Collection and Request for Comments on the Form 1 in Docket IC01–1–000 in the **Federal Register** proposing that the Form 1 be continued for an additional three years, and that the Form 1 be filed solely electronically (thus eliminating the paper copy), but that certain designated schedules be eliminated.¹ The Commission then issued a Notice of Proposed Information Collection and Request for Comments on the Form 1-F in Docket No. IC01–1F–000 in the

Federal Register.² As it has indicated in the notice for the Form 1, the Commission announced in the Form 1-F notice its proposal to continue the reporting requirements for an additional three years but to eliminate designated schedules. The comments in response to the Form 1 notice commended the Commission's efforts in reducing the burden by providing for electronic submission of the Form 1. Only one commenter objected to the elimination of the schedules. None of the comments in response to the Form 1-F notice addressed the elimination of the schedules. The Office of Management and Budget (OMB) approved the 3-year extension, the electronic filing of Form 1, and the elimination of the schedules from Form 1 on March 29, 2002, and for Form 1-F on April 2, 2002.

This final rule implements those proposed changes as approved by OMB. The rule is part of the Commission's ongoing efforts to revise and streamline the Commission's existing reporting requirements. Electronic filing and elimination of the paper copy of Form 1 will reduce the burden on reporting utilities. Elimination of the designated schedules will also reduce the reporting burden. The final rule also eliminates a cross reference to one of the eliminated schedules in § 35.25.

Further notice and comment procedures are not necessary in this rulemaking docket because the Commission has already provided interested parties with an opportunity to comment on the revisions and responded to those comments in Docket Nos. IC01–1–000 and IC01–1F–000.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.³ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended,⁴ and also for information gathering, analysis, and dissemination.⁵ This Final Rule does not substantially change the effect of the regulation being amended. In addition, the Final Rule involves information gathering, analysis

² See 66 FR 49945 (Oct. 1, 2001); see also 67 FR 4244 (Jan. 29, 2002).

³ Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

⁴ 18 CFR 380.4(a)(2)(ii).

⁵ 18 CFR 380.4(a)(5).

¹ See 66 FR 41217 (Aug. 7, 2001); see also 67 FR 4243 (Jan. 29, 2002).

and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

The Commission finds that most filing entities regulated by the Commission do not fall within the Regulatory Flexibility Act's definition of a small entity.⁶ Moreover, this Final Rule will reduce the reporting burden and promote consistent reporting practices for all reporting companies. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency. The information collection requirements in this Final Rule are contained in Form 1, "Annual Report of Major Electric Utilities and Licensees and Others" (OMB Control No. 1902-0021) and Form 1-F "Annual Report for Nonmajor Public Utilities, Licensees and Others" (OMB Control No. 1902-0029). Form 1 most recently received OMB approval on March 29, 2002 for the period through March 2005. Form 1-F received OMB approval on April 2, 2002 for the period through April 2005. As part of the renewal process for both the Form 1 and 1-F, OMB was notified that the Commission was proposing to eliminate the paper submission of the Form 1 and to eliminate the designated schedules. The electronic filing initiative is part of the Commission's ongoing program to reduce reporting requirements. As explained below, the shift to electronic filing of the Form 1 and the elimination of designated schedules will reduce the burden on regulated companies for maintaining and reporting information under the Commission's Form 1 and 1-F regulations.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 208-1415) or from the Office of Management

and Budget, Room 10202 NEOB, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395-7318, fax: (202) 395-7285).

The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Title: FERC Form 1, "Annual Report of Major Electric Utilities, Licensees and Others"; FERC Form 1-F, "Annual Report for Nonmajor Public Utilities, Licensees and Others".

Action: Revision of Currently Approved Collections of Information.

OMB Control No.: 1902-0021 and 1902-0029.

Respondents: Jurisdictional electric utilities and licensees who have generation, transmission, distribution and/or sell electric energy within the United States and its possessions.

Frequency of Responses: Annually.

Reporting Burden: Form 1: At the time of filing for OMB renewal in January 2002, there were 216 respondents filing annually. This is an increase of 6 respondents from the Commission's last submission in 1998. The Commission's original estimate for filing the Form 1 was 1,217 hours per respondent. With the proposed changes to the Form 1, the Commission estimates that the filing per respondent will be reduced to 1,050 hours. This is a reduction of 167 hours per respondent or 28,770 in the total hours. *Form 1-F:* The changes to the Form 1-F through the elimination of designated schedules are offset by the increase in the number of respondents who now file the report. The increase in respondents is a result of the addition of new companies meeting the 10,000 megawatt hour and not qualifying as a major electric utility threshold. Therefore, as there is an increase in the number of respondents (from 7 to 26), notwithstanding the reduction in hours per respondents, there will be an increase in the total hours (from 224 to 832).

The Commission also estimates there will be burden cost reductions realized by the respondents and the Federal government. Previously the estimated annualized Form 1 costs to respondents was \$64,049 per respondents (\$13,450,290 total) and with the proposed changes, the costs should be \$58,857 (\$12,713,112). This should result in a savings of \$5,192 per respondent. For the Federal government, the cost for processing Form 1 in 1998 was stated as \$193,025 (approximately 1.6 FTE), however with the changes identified above the annual

cost is estimated to be \$179,828 or a savings of \$13,197.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. These electronic filing requirements conform to the Commission's plan for efficient information collection, communication and management within the electric power industry. The changes will contribute to well-informed decision-making and streamlined workload processing.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208-1415, fax: (202) 273-0873, e-mail: michael.miller@ferc.gov.

For the submission of comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395-7318, fax: (202) 395-7285).

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994
—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading
—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to

⁶ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208-2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208-1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect June 24, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁷ The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.⁸

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends parts 35, 141 and 385, Chapter I, Title 18, of the Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 35.25 [Amended]

2. In § 35.25, paragraph (c)(1)(ii)(C) is removed, and paragraph (c)(1)(ii)(D) is redesignated as paragraph (c)(1)(ii)(C).

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

3. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. In § 141.1, paragraphs (b)(1)(i) and (b)(2) are revised to read as follows:

§ 141.1 FERC No. Form 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(b) *Filing requirements.* (1) *Who must file—(i) Generally.* Each Major electric utility (as defined in part 101 of Subchapter C of this chapter) and other entity, *i.e.* each corporation, person or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 *et seq.*), including any agency, authority or other legal entity or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service equal to Major as defined above, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file electronically with the Commission the FERC Form 1 pursuant to the General Instructions set out in that form.

* * * * *

(2) *When to file and what to file.* This report shall be filed on or before April 30 of each year for the previous calendar year. This report must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in this form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the report required to be submitted for the reporting calendar year of 2002, due on or before April 30, 2003.

PART 385—RULES OF PRACTICE AND PROCEDURE

5. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

6. In § 385.2011, paragraph (c)(3) is revised to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(c) *What to file.* * * *

(3) With the exception of the Form 1, the electronic media must be accompanied by the traditional prescribed number of paper copies.

* * * * *

[FR Doc. 02–12798 Filed 5–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

[T.D. 02–28]

Technical Amendment to the Customs Regulations: Reusable Shipping Devices Arriving From Canada and Mexico

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include certain reusable shipping devices arriving from Canada or Mexico in the list of merchandise excepted from the requirement that all merchandise imported into the United States be entered. The substantive regulation allowing for these types of devices to be excepted from entry is set forth in § 10.41b(b) of the Customs Regulations. During a periodic review of its regulations to ensure that they are current, correct and consistent, Customs noted that in § 141.4 of the Customs Regulations, the list of merchandise excepted from the entry requirement did not cross-reference § 10.41b(b). This document remedies that omission.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Office of Regulations and Rulings, 202–927–1327.

SUPPLEMENTARY INFORMATION:

⁷ 5 U.S.C. 804(2).

⁸ 5 U.S.C. 801(a)(1)(A).

Background

Under § 141.4(a), Customs Regulations (19 CFR 141.4(a)), all merchandise imported into the United States is required to be entered, unless specifically excepted. The exceptions from the general rule that all imported merchandise must be entered are set forth in § 141.4(b), Customs Regulations (19 CFR 141.4(b)). In particular, § 141.4(b)(3) excepts instruments of international trade as described in § 10.41a, Customs Regulations (19 CFR 10.41a). In addition to this exemption from entry, however, certain reusable shipping devices arriving from Canada or Mexico are also exempted from entry pursuant to § 10.41b(b), Customs Regulations (19 CFR 10.41b(b)), as amended by Treasury Decision (T.D.) 96-20 (61 FR 7987) of March 1, 1996.

Accordingly, this document amends § 141.4(b)(3), Customs Regulations (19 CFR 141.4(b)(3)), to include a reference to § 10.41b(b), in order to reflect that reusable shipping devices from Canada or Mexico are also exempted from Customs entry requirements. Furthermore, a reference is added in § 141.4(b)(3) to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS), which provides the underlying legal authority for the exemption of the specified shipping devices from Customs entry requirements.

Administrative Procedure Act, the Regulatory Flexibility Act and Executive Order 12866

Because the amendments merely conform with existing law or regulation, notice and public procedure are unnecessary, and for the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor do these amendments meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects In 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

Amendment to the Regulation

Part 141, Customs Regulations (19 CFR 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141, Customs Regulations, continues to read, and the specific sectional authority for § 141.4 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

Section 141.4 also issued under 19 U.S.C 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

2. Section 141.4 is amended by revising paragraph (b)(3) to read as follows:

§ 141.4 Entry required.

* * * * *

(b) Exceptions.

* * *

(3) Instruments of international traffic described in § 10.41a and § 10.41b(b) of this chapter, under the conditions provided for in those sections. See also Chapter 98, Subpart III, U.S. Notes 3 and 4, HTSUS.

* * * * *

Robert C. Bonner,
Commissioner of Customs.

Approved: May 17, 2002.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02-12938 Filed 5-22-02; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinat and Chlortetracycline

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 new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved decoquinat and

chlortetracycline Type A medicated articles to make two-way combination Type B and Type C medicated feeds for calves, beef, and nonlactating dairy cattle used for prevention of coccidiosis, treatment of bacterial enteritis, and treatment of bacterial pneumonia.

DATES: This rule is effective May 23, 2002.

FOR FURTHER INFORMATION CONTACT:

Janis R. Messenheimer, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7578, e-mail: [jmessen@cvm.fda.gov](mailto:jmessenh@cvm.fda.gov).

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141-185 that provides for use of DECCOX (decoquinat) and AUREOMYCIN (chlortetracycline) Type A medicated articles to make combination drug Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle. The combination Type C feeds are used for the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, for treatment of bacterial enteritis caused by *Escherichia coli*, and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline. The NADA is approved as of March 15, 2002, and the regulations are amended in 21 CFR 558.195 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 each 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.

FDA has determined under 21 CFR 25.33(a)(2) 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 558

Animal drugs, Animal feeds.

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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.195 [Amended]

2. Section 558.195 *Decoquinat* is amended in the table in paragraph (d) in the entry for the combination “Chlortetracycline approximately 400” in the “Limitations” column by removing “Withdraw 24 hours prior to slaughter.” and by adding in its place “Withdraw 24 hours prior to slaughter when manufactured from CTC (chlortetracycline) Type A medicated articles under NADA 141–147. Zero withdrawal time when manufactured from AUREOMYCIN (chlortetracycline) Type A medicated articles under NADA 141–185.”.

Dated: May 9, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–12873 Filed 5–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP TAMPA–02–022]

RIN 2115–AA97

Security Zones; Port of St. Petersburg, St. Petersburg, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary fixed security zones encompassing all waters around all Coast Guard and waterfront facilities and moorings in St. Petersburg Harbor, St. Petersburg, Florida. These security zones are needed for national security reasons to protect Coast Guard vessels and facilities from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Tampa, Florida or his designated representative.

DATES: This rule is effective from 7 a.m. on May 1, 2002, until 6 p.m. on June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Tampa 02–022] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David G. McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard or other law enforcement vessels in the vicinity of these zones to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to Coast Guard Group St. Petersburg or the Army National Guard Base in St. Petersburg Harbor, St. Petersburg, Florida. These security zones will encompass all waters on the north side of channel serving St. Petersburg Harbor, commencing at dayboard “10” in approximate position 27°45.58' N, 082°37.52' W, and westward along the seawall 100 feet from the seawall and around all moorings and vessels to the end of the storage facility in approximate position 27°45.68' N, 082°37.80' W. The zones will also include the Coast Guard south moorings in St. Petersburg Harbor. This zone will extend 100 feet around the piers commencing from approximate position 27°45.52' N, 082°37.96' W to 27°45.52' N, 082°37.60' W. All positions noted are fixed using the North American Datum of 1983 (World Geodetic System 1984).

The southern boundary of the zone is shoreward of a line between Green Daybeacon 11 (LLN 2500) westerly to the entrance to Salt Creek. Entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port, Tampa, Florida or his designated representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 6.04-11, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07-022 is added to read as follows:

§ 165.T07-022 Security Zones; Port of St. Petersburg, Florida.

(a) *Regulated area.* The Coast Guard is establishing temporary fixed security zones in all waters north of the marked channel in St. Petersburg Harbor, St. Petersburg, Florida. These security zones will encompass all waters on the north side of channel serving St. Petersburg Harbor, commencing at dayboard "10" in approximate position 27°45.58' N, 082°37.52' W, and westward along the seawall 100 feet from the seawall and around all moorings and vessels to the end of the storage facility in approximate position 27°45.68' N, 082°37.80' W. These zones

will also include the Coast Guard south moorings in St. Petersburg Harbor. This zone will extend 100 feet around the piers commencing from approximate position 27°45.52' N, 082°37.96' W to 27°45.52' N, 082°37.60' W. All positions noted are fixed using the North American Datum of 1983 (World Geodetic System 1984). The southern boundary of the zone is shoreward of a line between Green Daybeacon 11 (LLN 2500) westerly to the entrance to Salt Creek.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or his designated representative. The Captain of the Port will notify the public via Marine Safety Broadcast on VHF-FM Channel 16 and 13 (157.1 MHz).

(c) *Dates.* This section is effective from 7 a.m. on May 1, 2002 until 6 p.m. on June 15, 2002.

Dated: April 16, 2002.

A.L. Thompson, Jr.,

Captain, Coast Guard, Captain of the Port, Tampa.

[FR Doc. 02-13005 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651-AB31

Amendment of Rule Regarding Filing of Trademark Correspondence via "Express Mail"

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) is amending its rules to provide that certain trademark documents sent by United States Postal Service (USPS) "Express Mail Post Office to Addressee" service (Express Mail) will no longer be considered to have been filed with the USPTO on the date of deposit with the United States Postal Service, but will be deemed to have been filed on the date of receipt in the USPTO. This amendment will not apply to documents filed with the Trademark Trial and Appeal Board (TTAB) and the Assignment Branch.

DATE: Effective Date: June 24, 2002.

FOR FURTHER INFORMATION CONTACT:

Craig Morris, Office of the Commissioner for Trademarks, (703)

308–8910, extension 136, or e-mail questions to tmexpressmail@uspto.gov.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** (66 FR 45792) on August 30, 2001. That notice proposed to amend rule 1.10, 37 CFR 1.10, concerning the use of USPS Express Mail to eliminate the filing of any document by Express Mail for which an electronic form is currently available in Trademark Electronic Application System (TEAS) and included proposals to amend other rules. The present notice pertains solely to the proposal regarding § 1.10.

Written comments regarding the proposal to amend Section 1.10 were submitted by one individual, eight law firms, and one organization.

Effect of Mailing Correspondence via “Express Mail”

Section 1.10 provides that, if the requirements of the rule are met, any correspondence delivered to the USPTO by USPS Express Mail will be considered to have been filed with the USPTO on the date of deposit with the USPS. Section 1.10 is amended to provide that if an electronic form is available in TEAS, but the applicant files a paper document, the filing date of the document will be the date of receipt in the USPTO, even if such document is delivered by Express Mail.

Comment: Two comments suggested that receipts issued by the USPS in connection with Express Mail submissions provide assurance that a document was filed at a particular time, and that the TEAS system cannot provide such assurance.

Response: TEAS provides filers with an assurance that the document submitted was received by the USPTO. Within seconds of completion of the filing process, the following message appears on the user’s screen: “Success! We have received your application and assigned the following serial number 78/—.” (or if not an initial application, then wording appropriate for the particular filing submitted). Filers can print and retain copies of this message. If the message does not appear within seconds, then the filing was not completed successfully. Hence, there is never any doubt as to whether a document was transmitted successfully.

Additionally, the USPTO provides e-mail acknowledgments as a follow-up courtesy. If, for whatever reason, a filer does not receive this acknowledgment, the filer may request that the acknowledgment be re-sent, so long as the filer has received the “success” message referred to above.

Comment: One comment suggested that Section 1.10 should be amended to provide that correspondence deposited as Express Mail should be considered to have been filed with the USPTO on the date of deposit with the USPS even if a TEAS form exists for transmitting that correspondence electronically, provided that the filer pays a surcharge.

Response: TEAS provides the same benefit provided by use of Express Mail under current § 1.10. A TEAS filer is assured that the document is received by the USPTO, and that the filing date of a document is the date the USPTO receives the transmitted document, provided that all requirements for accordance of a filing date are met. It is therefore unnecessary to continue to treat the date of deposit as Express Mail as the filing date; moreover, filing through TEAS will save applicants Express Mail fees.

Comment: One comment suggested that where correspondence includes specimens that cannot be easily scanned, the USPTO should continue to allow filing under § 1.10.

Response: The USPTO believes that scanning should be feasible in almost all circumstances. Low range scanners and digital cameras are relatively inexpensive. The quality of these scanners and cameras is sufficient for capturing an image that is acceptable for examination purposes.

Comment: In addition to the proposal to amend § 1.10, the Notice of Proposed Rulemaking published in the **Federal Register** (66 FR 45792) on August 30, 2001, also proposed amendments that are not addressed in the present Final Rule. These proposals were to amend various sections of 37 CFR to require mandatory use of TEAS forms, unless either: (1) The pro se applicant or registrant, or an attorney for the applicant or registrant, verifies that he or she lacks access to TEAS or the technical capability to use TEAS; or (2) the applicant or registrant is a person described in 15 U.S.C. 1126(b). One comment suggested that applications mailed via Express Mail should be considered to have been filed on the date of deposit, if the applicant falls within one of the proposed exceptions to the proposed requirement that TEAS must be used in all cases. Another comment asked whether that was the intended result of the proposed amendment to Section 1.10, and suggested that, if so, the language of § 1.10 should be amended to so state.

Response: The USPTO believes that it is unnecessary to amend § 1.10 to provide that correspondence mailed by Express Mail should be considered to have been filed in the USPTO on the

date of deposit with the USPS, in cases where the filer would be within one of the proposed exceptions to the proposed rule that TEAS be utilized in all cases. The USPTO believes that it can best meet the needs of its filers by encouraging the widespread use of TEAS. Hence, the USPTO wishes to provide all filers with incentive to use TEAS, including those filers who are persons described in 15 U.S.C. 1126(b). Additionally, the USPTO believes that a very small number of filers will lack access to TEAS or the capability to use TEAS. Even if a filer’s computer system becomes temporarily unavailable due to technical problems, most filers can utilize alternative systems, such as ones maintained by commercial vendors. It would be impractical to create an exception to the Express Mail rule that would cover only a small number of filers.

Comment: One comment suggested that computer viruses may at times render the Internet, and hence TEAS, unavailable. The comment maintains that there should be an exception for these circumstances. The comment suggested that if use of Express Mail no longer resulted in the date of mailing being treated as the date of filing, then these filers may not be able to submit correspondence in time to meet certain filing deadlines.

Response: The USPTO believes that filers can avoid the effects of emergencies such as computer viruses by making it a practice not to defer TEAS filings until the last possible hour. The USPTO also believes that if a filer experiences a computer problem, alternatives are available such as the computer services offered by the Patent and Trademark Depository Libraries and commercial vendors.

If the USPTO’s TEAS or the Revenue Accounting and Management (RAM) server is unavailable, the applicant or registrant can file a petition under Trademark Rule 2.146(a)(3)(5), 37 CFR 2.146(a)(5), requesting that its submission be deemed to have been filed on the day that it attempted to use TEAS. The petition should include an explanation of the petitioner’s efforts to file using TEAS, any relevant evidence of such efforts, and a statement that according to the petitioner’s knowledge TEAS was unavailable. The petition should be filed within two business days of the attempt(s) to file a document using TEAS. The USPTO is closely monitoring the operation of the TEAS and RAM servers and will routinely grant petitions in the instances where either of these USPTO servers are down.

Comment: One comment asked whether a TEAS application that does

not identify a filing basis and/or is unsigned would be accepted. This comment suggested that if such applications are not accepted by TEAS, and if use of TEAS is made mandatory in most cases, then filers who wish to file such applications should be allowed to do so using paper. This comment further suggested that in such cases, these paper filings, if mailed by Express Mail, should be considered filed on the date of deposit as Express Mail.

Response: There is no need to provide an exception for these applications since TEAS accepts both submissions that are unsigned and submissions that do not identify a filing basis.

Comment: One comment stated that converting from one system to another always entails costs, and that users whose filing systems use Express Mail would therefore incur costs if the benefits of Express Mail were no longer available.

Response: Those who use TEAS instead of Express Mail will save the cost of using Express Mail. Of course, filers may continue to use Express Mail if they wish to do so. The date of receipt of such mail will be its actual date of receipt in the USPTO.

Rulemaking Requirements

The USPTO has determined that the rule change has no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The comments received did not establish that the rule would have a significant impact under the Regulatory Flexibility Act. The changes have been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This final rule contains collections of information requirements that have been approved by OMB under OMB Control Number 0651-0009. The public reporting burden for this collection of information is estimated to average as follows: Seventeen minutes for applications to obtain registrations based on an intent to use the mark under 15 U.S.C. 1051(b), if completed using paper forms; fifteen minutes for applications based on 15 U.S.C. 1051(b), if completed using electronic forms; twenty-three minutes for applications to obtain registrations based on use of the mark in commerce under 15 U.S.C. 1051(a), if completed using paper forms; twenty-one minutes for applications to obtain registrations based on 15 U.S.C. 1051(a), if completed using electronic forms; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under 15 U.S.C. 1126(d), if completed using paper forms; nineteen minutes for applications to obtain registrations based on 15 U.S.C. 1126(d), if completed using electronic forms; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under 15 U.S.C. 1126(e), if completed using paper forms; eighteen minutes for applications to obtain registrations based on 15 U.S.C. 1126(e), if completed using electronic forms; thirteen minutes for allegations of use of the mark under §§ 2.76 and 2.88 if completed using paper forms; twelve minutes for allegations of use under §§ 2.76 and 2.88 if completed using electronic forms; ten minutes for requests for extensions of time to file statements of use under § 2.89 if completed using paper forms; nine minutes for requests for extensions of time to file statements of use if completed using electronic forms; eleven minutes for Section 8 affidavits if completed using paper forms; ten minutes for Section 8 affidavits if completed using electronic forms; fourteen minutes for combined Sections 8 and 9 filings if completed using paper forms; thirteen minutes for combined Sections 8 and 9 filings if completed using electronic forms; fourteen minutes for combined Sections 8 and 15 affidavits if completed using paper forms; thirteen minutes for combined Sections 8 and 15 affidavits if completed using electronic forms; eleven minutes for Section 15 affidavits if completed using paper forms; and ten minutes for Section 15 affidavits if completed using electronic forms. These time estimates include the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503 (Attn: PTO Desk Officer).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Patents.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Patent and Trademark Office is amending part 1 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Revise § 1.10(a) to read as follows:

§ 1.10 Filing of correspondence by "Express Mail."

(a)(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS, except for documents described in the following paragraphs (a)(1)(i) and (ii) of this section:

(i) Trademark applications filed under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051 and 1126.

(ii) Other documents for which a Trademark Electronic Application System (TEAS) form exists:

(A) Amendment to allege use under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c);

(B) Statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(C) Request for extension of time to file a statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(D) Affidavit of continued use under section 8 of the Trademark Act, 15 U.S.C. 1058;

(E) Renewal request under section 9 of the Trademark Act, 15 U.S.C. 1059; and

(F) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

* * * * *

Dated: May 15, 2002.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 02-12878 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900-A198

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) by establishing safeguards in the case of "disinterested third-parties" who pay a veteran's attorney fees and by simplifying certain notice procedures. We have carefully considered the comments submitted in response to our notice of proposed rulemaking (NPRM), and have decided to adopt the amendments we proposed concerning those two matters, but not to adopt the provisions relating to payment of attorney fees from past-due benefits.

DATES: *Effective Dates:* This rule is effective June 24, 2002, except for § 20.609(i) which is effective July 22, 2002.

Applicability Date: Amendments to 38 CFR 20.609(i) will apply to third-party agreements received at the Board of Veterans' Appeals on or after July 22, 2002. Third party fee agreements received prior to that date will be subject to the pre-existing rules, which require that all fee agreements—

including third-party agreements—be filed with the Board.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-5978.

SUPPLEMENTARY INFORMATION: On December 9, 1997, VA published in the *Federal Register* at 62 FR 64790 a Notice of Proposed Rulemaking (NPRM) which would (1) discontinue VA's practice of paying attorney fees from past-due benefits; (2) establish safeguards in the case of "disinterested third-party" payers; and (3) simplify certain notice procedures. We provided a 60-day comment period that ended February 9, 1998.

We received more than 80 comments from attorneys, individuals, local veterans' groups, Vietnam Veterans of America, Veterans' Due Process, National Organization of Veterans' Advocates, a county bar association, and members of Congress.

Most of the comments related to the issue of paying attorney fees from past-due benefits. Some comments addressed the "third-party" issue. None of those comments supported either change.

There were no comments relating to the notice procedures.

In this document, we will consider the notice procedures, the fee payment procedures, and the third-party procedures, in that order. We will also separately discuss the effective date provisions of this rule.

Based on the rationales given in the NPRM and in this document, we adopt as a final rule the provisions of the proposed rule with the changes discussed below.

I. Simplifying Notice Procedures

In our NPRM, we proposed to amend Rule 609(i) (38 CFR 20.609(i)), relating to motions to review attorney fee agreements, and Rule 610(d) (38 CFR 20.610(d)), relating to motions challenging expenses. The amendments would eliminate the requirement of mailing by certified mail and replace it with a certification by the mailer.

We received no comments on this proposal. For the reasons set forth in the NPRM, we adopt it as published.

II. Taking VA Out of the Business of Paying Attorney Fees

In our NPRM, we proposed to end VA's discretionary practice of paying attorney fees out of a veteran's past-due benefits. No commenter supported this proposal.

We have decided not to adopt the proposed amendments as a final rule.

III. Third-Party Agreements

Eleven commenters, all attorneys, commented on the "third-party payer" rule. Those comments fell into eight categories:

1. VA has no business examining contracts where fees are not to be paid from past-due benefits.

2. VA has no business examining contracts where the veteran does not pay the fee.

3. Without a contingency agreement, third-party payers would have unlimited liability.

4. Prohibiting third-party contingency agreements will discourage attorneys from representing veterans.

5. The additional requirements VA proposed on third-party fee agreements will increase the administrative burden VA is trying to reduce.

6. Include in the presumption of "not disinterested" only dependent parents.

7. Do not adopt the proposed amendments because people will violate the law anyway.

8. Without third-party contingent fee agreements, claimants will not be able to afford attorneys.

As discussed below, we find none of these arguments persuasive and publish the rule as proposed.

A. VA Has No Business Examining Contracts Where Fees Are Not To Be Paid from Past-Due Benefits

Some commenters said that VA has no business examining agreements where fees are not to be paid from past-due benefits. The law itself permits the Board to review fee agreements for reasonableness regardless of whether or not they call for payment of fees from past-due benefits. 38 U.S.C. 5904(c)(2). We make no change based on the commenters' argument.

B. VA Has No Business Examining Contracts Where the Veteran Does Not Pay the Fee

Some commenters stated that VA has no authority to examine a fee agreement when the claimant is not paying the fee.

VA is the part of the Executive Branch charged with enforcing, among other things, the provisions of 38 U.S.C. 5904. *Id.* 501(a) (Secretary has authority to prescribe all rules and regulations necessary or appropriate to carry out the laws administered by the Department). VA is neither required nor expected to turn a blind eye to attempts to evade the law. Indeed, it is a criminal offense to charge a fee in VA cases except as provided by statute. 38 U.S.C. 5905.

It has been our experience that the majority of third-party agreements are rather blatant attempts to avoid the

restriction, imposed by the Veterans' Judicial Review Act (VJRA), Public Law 100-687, Div. A, 102 Stat. 4105 (1988), that attorneys may not charge veterans for services which are rendered prior to the first final Board decision on an issue. The Congress was quite clear that attorneys should not be paid until the veteran had gone through the system once using the free representation provided by veterans service organizations (VSOs). That clarity is shown in this statement by the Chairman of the Senate Committee on Veterans' Affairs during the 1988 debate on the VJRA:

The compromise agreement before us today prohibits attorneys fees until after the BVA makes its first final decision, thus contemplating that the current practice of veterans being assisted by skilled veterans' service officers throughout the VA and initial BVA administrative processes would continue to operate exactly as it does now.

134 Cong. Rec. S16632, 16646 (daily ed. Oct. 18, 1988) (debate on the VJRA) (remarks of Sen. Cranston). *See also id.* at H10333, H10344 (daily ed. Oct. 19, 1988) (remarks of Rep. Montgomery, Chairman of the House Committee on Veterans' Affairs) (VJRA was designed to permit VSOs to continue to have the predominant role in helping veterans get the benefits they deserve).

In addition, the disinterested third-party exception to the restriction on payment of attorney fees is just that: an exception. Not any third party may pay a veteran's legal bills—only a “disinterested” third party. VA cannot know if an arrangement meets this criterion unless it is able to examine the agreement.

VA has the authority to review agreements, so we make no change based on the argument to the contrary.

C. Without a Contingency Agreement, Third-Party Payers Would Have Unlimited Liability

In our NPRM, we proposed barring any contingent fee agreements by third parties. The primary basis for this proposal was that contingent fee agreements function as a financing device that enables a client to assert and prosecute an otherwise unaffordable claim. If a third party agrees to pay an attorney to represent a veteran (or other claimant) because the law bars the attorney from charging the veteran a fee, the issue of “financing” the cost of the litigation through a successful outcome is moot: By definition, a disinterested third party will receive no benefit from any award to the veteran, so that the outcome can generate no funds with which to pay the attorney. 62 FR at 64792.

Some commenters argued that contingent fee agreements were useful because such agreements would limit the liability of the payer.

We make no change based on the commenters' argument. Agreeing to pay a percentage of an award does not, in any real sense, limit the liability of the third-party payer. Such a payer still has no idea at the outset how much that award will be. Some past-due benefits amount to a few hundred dollars, some to hundreds of thousands. In many cases, there is simply no way to predict what that amount will be.

D. Prohibiting Third-Party Contingency Agreements Will Discourage Attorneys from Representing Veterans

Some commenters argued that prohibiting third-party contingency agreements will discourage attorneys from representing veterans. For the reasons discussed above and in the Supplementary Information to our NPRM, we do not believe that contingency agreements make any sense in the third-party context. Their use encourages evasion of the law. The only attorneys who will be “discouraged” will be those who rely on the veteran to reimburse the so-called “disinterested” third party. We make no change on the commenters' argument.

E. The Additional Requirements VA Proposed on Third-Party Fee Agreements Will Increase the Administrative Burden VA is Trying to Reduce

Three commenters argued that our proposed increased requirements relating to third-party agreements will increase the administrative burden that VA is attempting to reduce by this rulemaking. While that is true as far as it goes, it is also true that these changes are necessary to help enforce statutory limitations on payment that are being violated. As discussed above and in the Supplementary Information to our NPRM, it is our experience that third-party agreements are being used to evade those limitations. We cannot quantify the effect of the increased requirements, but, since the number of cases involving attorney representation is relatively small—2,132 of 34,028 appeals in FY 2000 (6.3%) and since we assume that most attorneys follow the law and regulations relating to filing fee agreements, we have no reason to believe that the overall cost to VA will be high. We make no change based on the commenters' argument.

F. Include in the Presumption of “not disinterested” Only Dependent Parents

One commenter suggested that we amend 38 CFR 609(d)(2)(ii), which provides that a parent is presumed not to be a disinterested third party, to provide that only dependent parents would be so presumed. As we discussed in our NPRM, one of our concerns in third-party issues is the creation of “straw men,” i.e., individuals who nominally pay the attorney fee, but who in fact are, at best, mere conduits for the client's money. We note that the same regulation permits a person who is presumed not to be disinterested to demonstrate, by clear and convincing evidence, that he or she has no financial interest in the success of the claim. Accordingly, we reject this suggestion.

G. We Should Not Publish the Rules Because People Will Violate the Law Anyway

One commenter suggested that we abandon our third-party rules because people will violate the law anyway. We do not find this a persuasive argument.

H. Without Third-Party Contingent Fee Agreements, Claimants will not be Able to Afford Attorneys

One commenter suggested that, without third-party contingent agreements, claimants will not be able to afford attorneys. As we discussed above and in our NPRM, if an attorney's fee is being paid by a disinterested third party, the represented claimant's ability to pay is simply irrelevant. The whole point of payment by a disinterested third party is that someone other than the claimant pays the attorney's fee. Accordingly, we make no change based on this argument.

IV. Effective Dates

Most of the amendments made by this notice are effective June 24, 2002. However, the amendments to 38 CFR 20.609(i) requiring specific information and certifications in the case of third-party fee agreements will apply only to third-party agreements received at the Board of Veterans' Appeals on or after July 22, 2002. Third-party fee agreements received prior to that date will be subject to the pre-existing rules which, since 1992, have required that all fee agreements—including third-party agreements—be filed with the Board. Rule 609(g), 38 CFR 20.609(g). We are delaying the applicability date of the third-party changes to give attorneys time to modify their contracts with clients, if necessary.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: March 1, 2002.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In subpart A, § 20.3, paragraphs (n), (o), and (p) are redesignated as paragraphs (o), (p), and (q), respectively; and a new paragraph (n) is added to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(n) *Past-due benefits* means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

* * * * *

3. In subpart G, § 20.609, paragraphs (d)(2), (f), (g), and (i) are revised and paragraph (j) is added to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) * * *
(2) *Payment of fee by disinterested third party.* (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: "I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid."

* * * * *

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in Rule 20.3(n) (§ 20.3(n) of this part), will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if

other than the veteran, the name of each disinterested third-party payer (see paragraph (d)(2) of this section), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

* * * * *

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable; must be accompanied by all evidence the moving party desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Such motions (other than motions by the Board) must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must

credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the United States Court of Appeals for Veterans Claims.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

* * * * *

4. In subpart G, § 20.610, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to the representative. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the

copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to the claimant or appellant, setting forth the address to which the copy was mailed. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

* * * * *

[FR Doc. 02-12866 Filed 5-22-02; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247-0325a; FRL-7201-6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent usage and graphic arts operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 22, 2002 without further notice, unless EPA

receives adverse comments by June 24, 2002. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765-4182; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT:

Jerald S. Wamsley, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4111.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	442	Usage of Solvents	12/15/00	05/08/01
VCAPCD	74.19	Graphic Arts	4/10/01	10/30/01

EPA found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V on the following dates: on July 20, 2001 for SCAQMD Rule 442; and on January 18, 2002 for VCAPCD Rule 74.19. These completeness criteria must be met before formal EPA review may begin.

B. Are there Other Versions of These Rules?

We approved a version of SCAQMD Rule 442 into the SIP on November 16, 1983. We approved a version of VCAPCD Rule 74.19 into the SIP on April 19, 2001. Between these dates and today's action, California has not made an intervening submittal of these rules.

C. What Is the Purpose of the Rule Revisions?

SCAQMD Rule 442 specifies emission limits for organic materials used in operations not governed by SCAQMD Regulation 11 rules. These emission limits take the form of daily and monthly facility wide emission caps. A facility may meet these caps by installing emission control equipment, changing product formulation, or modifying manufacturing operations.

SCAQMD's December 15, 2000 amendments to Rule 442 revised the 1983 version within the SIP. Now, Rule 442 is formatted similar to other SCAQMD prohibitory rules. Consequently, the rule now incorporates the following sections: purpose, applicability, definitions, requirements, control equipment, test methods, recordkeeping, storage and disposal of VOC containing materials, and exemptions. Most of the 1983 rule language has been incorporated within this new format. The most significant addition to Rule 442 is the emission requirements that apply upon January 1, 2003. Here, daily VOC emission caps are replaced by a monthly emission cap of 833 pounds per facility.

VCAPCD Rule 74.19 is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in graphics arts operations such as flexographic printing, gravure printing, and lithographic printing. VOCs are emitted during the surface preparation, cleaning, printing, and drying phases of these processes.

VCAPCD's September 10, 1996 version of Rule 74.19 was amended as follows:

- The required ROC (reactive organic compound) content of adhesives used for printing operations was lowered;
 - The required ROC content of flexographic inks on porous substrates was lowered;
 - The required ROC content of fountain solutions used by lithographic printing operations was lowered;
 - The required ROC content or vapor pressure of cleaning solvents used for printing operations was reduced; and
 - The exemption limit of the rule was lowered from 175 pounds of ROC emissions per month to 200 pounds of ROC emissions per year.
- Each rule's TSD has more information on these changes.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). Both the SCAQMD and VCAPCD regulate an ozone nonattainment area (see 40 CFR part 81), so both Rule 442 and Rule 74.19 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VIII: Graphic Arts—Rotogravure and Flexography," USEPA, December 1978, EPA-450/2-78-033. A second draft CTG was published along with a companion Alternative Control Technique (ACT) document:

4. "Guideline Series, Control of Volatile Organic Compound Emissions from Offset Lithographic Printing," Draft, USEPA, OAQPS, September 1993; and,

5. "Alternative Control Techniques Document: Offset Lithographic Printing," USEPA, OAQPS, June 1994, EPA 453/R-94-054.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

Within SCAQMD Rule 442, daily VOC emission caps are replaced by a monthly emission cap of 833 pounds per facility. This monthly emissions cap of 833 pounds per month is approximately equivalent to the daily cap for photochemically reactive solvents assuming 22 working days a month. Furthermore, the 833 pound monthly limit is more stringent than the 600 pound daily emissions cap for non-photochemically reactive organic solvents that will be removed. As a result, the submitted Rule 442 does not interfere with reasonable further progress or attainment.

VCAPCD Rule 74.19's coating limits and exemption limit have been made more stringent. VCAPCD staff estimate that the April 10, 2001 changes to Rule 74.19 will reduce ROC emissions from graphics arts operations by 20 tons per year. In sum, the SIP is not weakened by the April 2001 changes to Rule 74.19.

The TSD for each rule has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD for VCAPCD Rule 74.19 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously

proposing approval of the same submitted rules. If we receive adverse comments by June 24, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 22, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. 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 32111, "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 (Pub. L. 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 July 22, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 29, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(B)(3) and (c)(288)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(284) * * *
(i) * * *
(B) * * *

(3) Rule 442 adopted on May 7, 1976 and amended on December 15, 2000.

* * * * *

(288) * * *
(i) * * *

(C) Ventura County Air Pollution Control District.

(1) Rule 74.19 adopted on August 11, 1992 and amended on April 10, 2001.

* * * * *

[FR Doc. 02-12839 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[PA183-4192a; FRL-7211-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Bethlehem Steel Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Bethlehem Steel Corporation. Bethlehem Steel Corporation is a major source of volatile organic compounds (VOC) and nitrogen oxides (NO_x) located in Dauphin County, Pennsylvania. EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on July 22, 2002 without further notice, unless EPA receives adverse written comment by June 24, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Branch

Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814-2182 or Betty Harris at (215) 814-2168 or via e-mail at quinto.rose@epa.gov or harris.betty@epa.gov. Please note that while questions may be posed via e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:**I. Background**

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_x sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

On December 21, 2001, PADEP submitted formal revisions to its SIP to establish and impose RACT for several major sources of VOC and NO_x. This rulemaking pertains to one of those sources. The other sources are the subject of separate rulemaking actions. The RACT determinations and requirements are included in plan approvals or operating permits issued by PADEP.

Bethlehem Steel Corporation (BSC) manufactures steel materials. This facility is located in Dauphin County, Pennsylvania and is considered a major VOC and NO_x emitting facility. In this

instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP 22-02012 to EPA as a SIP revision. This permit requires BSC sources and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and management practices. This permit also contains a facility-wide NO_x emission limit of 1,206 tons per year based on a 12-month rolling total, and includes NO_x emissions generated by BSC's steel production sources, combustion units of rated capacity greater than 50 million British Thermal Units per hour (mmbtu/hr), and combustion sources of rated capacity between 20-50 mmbtu/hr. Additionally, VOC emissions from this facility shall not exceed 210 tons per year based on a 12-month rolling total. The annual capacities of BSC's Boilers 2 and 5; 20-inch Mill Reheat Furnace; 35-inch Mill Reheat Furnaces 3 and 4; and Soaking Pit Batteries 1 through 6, shall not exceed the aforementioned facility-wide VOC emission limit. This permit also requires BSC to perform stack testing in accordance with 25 Pa Code Chapter 139 and approved by PADEP. BSC must comply with the recordkeeping requirements of 25 Pa Code, section 129.95, and shall consist of records pertaining to fuel usage, steel production throughput, and operating hours for NO_x sources. For the VOC sources, BSC shall maintain records pertaining to operating hours and usage of coatings, isopropylene, quench oil, and safety klean. These records shall be retained for two years, and made available to PADEP upon request.

III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving a revision to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for Bethlehem Steel Corporation located in Dauphin County, Pennsylvania. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules"

section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on July 22, 2002 without further notice unless we receive adverse comment by June 24, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Administrative Requirements

A. General 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 (Pub. L. 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.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Bethlehem Steel Corporation.

C. Petitions for Judicial Review

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 July 22, 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 approving the Commonwealth's source-specific RACT requirements to control VOC and NO_x from Bethlehem Steel Corporation 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 8, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(191) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(191) Revisions pertaining to VOC and NO_x RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on December 21, 2001.

(i) *Incorporation by reference.*

(A) A letter submitted on December 21, 2001 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and NO_x RACT determinations.

(B) Operating permit (OP) for Bethlehem Steel Corporation, Dauphin County, 22-02012, effective April 9, 1999.

(ii) *Additional material.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(191)(i)(B) of this section.

[FR Doc. 02-12837 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7216-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition submitted by Weirton Steel Corporation (Weirton) to exclude (or delist), on a one-time basis, a wastewater treatment sludge from the lists of hazardous wastes.

After careful analysis, we have concluded the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to wastewater treatment sludge previously generated at the Weirton facility in Weirton, West Virginia, which is contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks). Accordingly, this final rule conditionally excludes a specific volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is removed from the units in which it currently resides for disposal in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

EFFECTIVE DATE: May 23, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814-3395 for appointments. The public may copy material from the regulatory docket at \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, please contact David M. Friedman at the address above or at (215) 814-3395.

SUPPLEMENTARY INFORMATION:

Official Record

The official record for this action is kept in a paper format. The official record is maintained at the address in the **ADDRESSES** section at the beginning of this document.

Preamble Outline

I. Overview Information

II. Background

- A. What is a delisting petition?
- B. What regulations allow hazardous waste generators to delist waste?
- C. What information must the generator supply?

III. Weirton's Delisting Petition

- A. What waste is the subject of Weirton's petition?
 - B. What information did Weirton submit to support this petition?
- ##### IV. EPA's Evaluation and Final Decision
- A. Why is EPA approving this petition?
 - B. What limitations are associated with this exclusion?
 - C. When is the final rule effective?
 - D. How does this action affect States?

V. Public Comments Received on the Proposed Exclusion

- A. Who submitted comments on the proposed rule?
 - B. What were the comments?
- ##### VI. Administrative Assessments

I. Overview Information

On February 26, 2002, we proposed to grant a petition submitted by Weirton to exclude (or delist) from the definition of hazardous waste on a one-time basis, a wastewater treatment sludge currently contained in several onsite units. Today we are finalizing the decision to grant a conditional exclusion as described in the February 26, 2002, proposed rule.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator believes should not be considered hazardous.

In order for a petition to succeed, a petitioner must first show that a waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for us to determine whether any other factors (including additional constituents) warrant retaining the waste as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart

C of 40 CFR part 261, even if EPA has delisted its waste.

B. What Regulations Allow Hazardous Waste Generators To Delist Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. Weirton's Delisting Petition

A. What Waste Is the Subject of Weirton's Petition?

Weirton owns and operates an integrated steel mill, including the C&E wastewater treatment plant, occupying approximately 1300 acres on the banks of the Ohio River in Weirton, WV. On March 3, 1999, Weirton petitioned EPA to exclude, on a one-time basis, 18,000 cubic yards of wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) from the list of hazardous wastes contained in 40 CFR 261.31. The wastewater treatment sludge (known as the C&E sludge) is described in Weirton's petition as a mixture of small quantities of EPA Hazardous Waste Numbers F007 (spent cyanide plating bath solutions from electroplating operations) and F008 (plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process) with nonhazardous solids that settled during treatment of process wastewater, cooling water, quench water, and stormwater entering Weirton's C&E outfall area.

B. What Information Did Weirton Submit To Support This Petition?

To support its petition, Weirton submitted (1) detailed descriptions of its manufacturing and wastewater

treatment processes, including Material Safety Data Sheets (MSDS) for commercial products used in its processes; (2) detailed analytical results from representative samples of its wastewater treatment sludge collected both by the United States Army Corps of Engineers and by Weirton; and (3) environmental monitoring data from a groundwater investigation being conducted as part of an ongoing RCRA Facility Investigation at its site.

IV. EPA's Evaluation and Final Decision

A. Why Is EPA Approving This Petition?

Weirton petitioned EPA to exclude or delist on a one-time basis, the wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) because Weirton believes that the petitioned waste does not meet the criteria for which it was listed as a hazardous waste. Weirton also believes that the waste does not contain other constituents in concentrations that would render it hazardous.

Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

On February 26, 2002, we proposed to conditionally exclude Weirton's C&E sludge from the list of hazardous wastes in 40 CFR 261.31, and requested public comment on the proposed rule. (See, 67 FR 8762). For reasons stated in both the proposed rule and this document, we believe that Weirton's C&E sludge should be excluded from hazardous waste control.

B. What Limitations Are Associated With This Exclusion?

This exclusion applies only to a maximum volume of 18,000 cubic yards of C&E sludge, the estimated amount currently contained in the East Lagoon and the Figure 8 tanks as described in Weirton's petition. Any volume of sludge exceeding this amount cannot be managed as nonhazardous waste under this exclusion.

This exclusion will be effective only when the sludge is removed from the units in which it currently resides. That is, the C&E sludge remains a hazardous waste until it is removed from the East Lagoon and the Figure 8 tanks for transportation and subsequent disposal in a Subtitle D landfill which is

permitted, licensed, or registered by a state to manage municipal or industrial solid waste.

Furthermore, Weirton must provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal at least 60 calendar days prior to commencing these activities.

C. When Is the Final Rule Effective?

This rule is effective May 23, 2002. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State, or that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not necessarily apply within those authorized States. If Weirton transports the petitioned waste to, or manages the waste in, any State with delisting authorization, Weirton must obtain

delisting approval from that State before it can manage the waste as nonhazardous in that State.

V. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

We received public comments on the February 26, 2002, proposed exclusion from one interested party which was Weirton, the petitioner.

B. What Were the Comments?

Weirton expressed its support for the proposed exclusion.

VI. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. 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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not

required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: May 13, 2002.

Donald S. Welsh,
Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX of Part 261—[Amended]

2. Table 1 of appendix IX of part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Weirton Steel Corporation ..	Weirton, West Virginia	Wastewater treatment sludge (known as C&E sludge) containing EPA Hazardous Waste Numbers F007 and F008, subsequent to its excavation from the East Lagoon and the Figure 8 tanks for the purpose of transportation and disposal in a Subtitle D landfill after May 23, 2002. This is a one-time exclusion for a maximum volume of 18,000 cubic yards of C&E sludge. (1) Reopener language. (a) If Weirton discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then Weirton must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator and the West Virginia Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health or the environment. (2) Notification Requirements. Weirton must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
*	*	*

[FR Doc. 02-12964 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94-102; FCC 02-120]

Enhanced 911 Emergency Calling; Use of Non-Initialized Wireless Phones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses issues associated with the inability of a public safety answering point to call back an emergency caller for further critical information when that caller is dialing 911 using a non-service-initialized wireless telephone. The document requires that non-service-initialized handsets donated through carrier-sponsored programs and newly manufactured "911-only" phones be programmed with an identifying code, and that wireless carriers complete any network programming necessary to deliver this code. The document also requires that such phones be labeled to alert the user to the lack of call-back capability. Finally, the document

requires that public education programs be instituted to inform users of the limitations of non-initialized phones. The Commission takes these steps to alert all parties involved in a wireless 911 call originating from a non-initialized phone of the need for quick information as to the caller's exact location, thus increasing the likelihood that emergency services can be dispatched quickly to save lives.

DATES: Effective October 1, 2002. Public comment on the information collection is due July 22, 2002. Written comment by the Office of Management and Budget (OMB) must be submitted on or before September 20, 2002.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Jeanette Thornton; at JThornton@omb.eop.gov. OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patrick Webre, Attorney, 202-418-1310. Details regarding the information collection contained in this Report and Order, are available from Judith Boley Herman, Federal Communications Commission, 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in CC Docket No. 94-102; FCC 02-120, adopted April 17, 2002, and released April 29, 2002. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at qualexint@aol.com. Alternative formats (computer diskette, large print, audio cassettes, and Braille) are available to persons with disabilities by contacting Brian Millin at 202-418-7426, TTY 202-418-7365, or at bmillin@fcc.gov.

Synopsis of the Report and Order

1. In this Report and Order (R&O) the Commission takes further steps to improve the ability of public safety answering points (PSAPs) to respond quickly and efficiently to calls for emergency assistance made from a wireless mobile telephone. Specifically, the Commission addresses the issues associated with the inability of a PSAP to call back a 911 caller who is disconnected prematurely when that caller is using a non-service initialized wireless telephone (non-initialized phone). Non-initialized phones are handsets that are not registered for service with any Commercial Mobile Radio Service carrier. Because carriers generally assign a dialable number to a handset only when a customer enters into a service contract, a non-initialized phone lacks a dialable number. This presents a problem for PSAPs when a caller using a non-initialized phone fails to provide critical information, such as

precise location information, before the call is terminated. Because the PSAP cannot call a non-initialized phone back to obtain further information from the user, delays in response time can occur. The Further Notice of Proposed Rulemaking (FNPRM) regarding this issue may be found at 66 FR 31878, June 13, 2001.

2. The Commission, in the R&O, first requires that non-service-initialized handsets donated through carrier-sponsored programs and newly manufactured "911-only" phones be programmed with the code 123-456-7890 as the "telephone number" to alert PSAPs that a 911 call is being made from a wireless phone that lacks call-back capability. The Commission also requires that carriers complete any network programming necessary to deliver the 123-456-7890 telephone number to PSAPs, and not reject this number when a 911 call from a non-initialized phone programmed with this number is placed. The coding and software requirements are described in paragraphs 26 through 37 of the R&O.

3. The Commission also requires that non-initialized phones be labeled to alert the user to the lack of call-back capability. This will place users on notice that in using non-initialized or "911-only" phones, the caller must be sure to disclose all relevant information which might help the PSAP locate and resolve the emergency situation before the call is disconnected. The labeling requirement is detailed in paragraphs 38 through 41 of the R&O.

4. Finally, the Commission requires that carriers donating non-initialized phones and manufacturers of "911-only" phones must institute education programs to further inform users of the limitations of non-initialized phones. As indicated in paragraph 42 of the R&O, part of their programs must include a notice, in addition to the label affixed to the phone, which is provided at the time the phone is transferred to the user. The notice should give a more detailed explanation of the limitations of non-initialized phones, including distinctions between service-initialized phones and non-initialized phones.

5. The Commission will implement these rules for manufacturers of 911-only phones, which are not capable of receiving incoming calls, through an equipment manufacturing requirement and our equipment authorization process. As of October 1, 2002, each mobile unit manufactured as a 911-only phone must have installed 123-456-7890 as its telephone number/mobile identification number as we have described herein. It must also have affixed a prominently displayed and

legible label which will alert the user that the phone can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible. The Commission finds that notice of more than five months constitutes sufficient time to enable manufacturers of 911-only phones to effect those design and production modifications that will be necessary to comply with our rule. The Commission will consider the incorporation of modifications to existing authorized equipment to be Class I permissive changes that do not require a filing with the Commission.

6. The Commission finds that the requirements adopted in the R&O strike a fair balance between the interests of PSAPs and consumers in minimizing response delays in emergency situations, and carriers and manufacturers who share the concerns of PSAPs and consumers, but also must consider financial and technological realities. The Commission, in paragraphs 8 through 24 of the R&O, considers a number of alternative solutions to the inability of PSAPs to return calls from non-initialized phones used to dial 911 in emergency situations, including technical solutions. Briefly, the Commission concludes that it cannot require carriers to develop and implement a call-back solution at this stage. The Commission indicates that this conclusion reflects both the dearth of information received regarding the scope of the problem generated by the use of non-initialized phones, as well as the dearth of record evidence regarding the viability and feasibility of possible technical solutions to provide call-back capability to non-initialized phones.

7. The Commission will continue to monitor this issue and any data forwarded regarding the number of non-initialized calls received by PSAPs which require call-back. The Commission will also monitor the technical aspects of the issue. If a technologically feasible approach for call-back capability to non-initialized phones becomes available, the Commission reserves the ability to impose a call-back requirement on carriers and manufacturers of 911-only phones.

Paperwork Reduction Act

8. This R&O contains a revised information collection. As part of the Commission's continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget to take this opportunity to

comment on the information collections contained in this R&O, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due July 22, 2002.

Written comments from the Office of Management and Budget are due September 20, 2002. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0987.

Title: Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Non-Initialized Phones.

Form No.: N.A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for profit, State, local government.

Number of Respondents: 3,137.

Estimated Time Per Response: 1 to 3 hours.

Total Annual Burden: 4,660 one-time burden hours.

Cost to Respondents: \$661,125.

Needs and Uses: The labeling requirement, education requirement, and software/coding requirement are all needed to make all parties involved in emergency calls originating from non-initialized and "911-only" phones aware that the calling party cannot be reached for further information if necessary. Thus, complete, critical location information must be supplied to the PSAP as quickly as possible in the originating call.

Regulatory Flexibility Act

9. This is a summary of the Final Regulatory Flexibility Act Analysis. The full text of the Analysis may be found in Appendix C of the full Report and Order.

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the FNPRM in CC Docket No. 94-102. The Commission sought written public comment on the proposals in the FNPRM, comments on the IRFA. The

present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

11. The actions adopted in the Report and Order (R&O) are intended to respond to the problems arising from the inability of non-initialized phones used for emergency purposes, to receive incoming calls from Public Safety Answering Points (PSAPs) seeking further information to assist in servicing E911 emergency callers. Non-initialized wireless phones are not registered with a carrier and thus lacks a dialable number. The important steps adopted in this R&O will alert the parties involved in a wireless 911 call of the need for quick information as to the caller's exact location, thus increasing the likelihood that emergency services can be dispatched quickly to save lives, while imposing limited burdens on wireless carriers and manufacturers of "911-only" telephones.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

12. Although no comments were filed in direct response to the IRFA, comments were filed discussing issues of interest to small entities. PSAPs, wireless carriers, and equipment manufacturers generally agree that the ability of a PSAP to return a wireless 911 call if the originating call is dropped or the caller hangs up prematurely is important in ensuring a prompt emergency response. Public safety entities generally disagree with wireless carriers and equipment manufacturers regarding the availability and feasibility of a technical solution to the problem. Comments supporting the position that a technical solution to provide call-back capability to non-initialized phones is not feasible are discussed in paragraphs thirteen through twenty-four of the R&O. Individual proposals as to how to solve the call-back problem of non-initialized phones are further discussed elsewhere in this FRFA.

13. The Commission also received comment a proposed requirement that all carrier-sponsored wireless phone donation programs be service initialized so that call-back from the PSAPs will be available if needed. These comments, as well as the Commission's decision not to impose a mandate that all carrier-sponsored programs donate service-initialized phones, are discussed in paragraphs twenty-five through thirty-seven of the R&O.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities. In this regard, we note that there are approximately 5,000 primary PSAPs, most of whom qualify as small entities because they are either small organizations or small governmental jurisdictions.

15. Throughout this analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for "Cellular and Other Wireless Telecommunications" and "Wired Telecommunications Carriers." According to both of these standards, a

small entity is one with no more than 1,500 employees. To determine which of the affected entities in the affected services fit into the SBA definition of small business, the Commission has consistently referred to Table 5.3 in Trends in Telephone Service (Trends), a report published annually by the Commission's Wireline Competition Bureau.

16. We have included small incumbent local exchange carriers in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Local Exchange Carriers. According to the most recent data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, or are not independently owned. However, 1,037 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS. Also included in the number of local exchange carriers is the rural radio telephone service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the NAICS definition.

Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends indicates that 349 CAPs and CLECs, 87 local resellers, and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, 297 CAPs and CLECs, 86 local resellers, and 56 other local exchange

carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, for a total of 439 such entities qualified as small entities.

Fixed Local Service Providers and Payphone Providers. Trends reports that there are 1,831 fixed local service providers and 758 payphone providers. Using the NAICS standard for small entity of fewer than 1,500 employees, Trends estimates that 1,476 fixed local service providers, in combination with affiliates, have 1,500 or fewer employees and thus qualify as small entities. In addition, 755 payphone providers report that, in combination with their affiliates, they employ 1,500 or fewer individuals.

Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. There are 806 entities in this category as estimated in Trends, and 323 such licensees in combination with their affiliates have 1,500 or fewer employees, and thus qualify, using the NAICS guide, as small businesses.

Other Mobile Service Providers. Trends estimates that there are 44 providers of other mobile services, and again using the NAICS standard, 43 providers of other mobile services utilize with their affiliates 1,500 or fewer employees, and thus may be considered small entities.

Toll Service Providers. Trends calculates that there are 738 toll service providers, including 204 interexchange carriers, 21 operator service providers, 21 pre-paid calling card providers, 21 satellite service carriers, 454 toll resellers, and 17 carriers providing other toll services. Trends further estimates that 656 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS. This figure includes 163 interexchange carriers, 20 operator service providers, 20 pre-paid calling card providers, 16 satellite service carriers, 423 toll resellers, and 15 carriers providing other toll services.

Offshore Radiotelephone Service. This service operates on several TV broadcast channels that are not otherwise used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Cellular Equipment Manufacturers. The labeling requirement will affect manufacturers of 911-only phones. The

Commission does not know how many total cellular equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular equipment manufacturers is considerably lower than 920. Under SBA regulations, such a communications equipment manufacturer, which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern. This R&O only affects manufacturers of 911-only phones. We are aware of only one manufacturer of 911-only phones, SecureAlert, which may be classified as a small entity. The Commission therefore estimates that our current action will affect fewer than ten small cellular equipment manufacturers.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. As indicated in paragraphs two and twenty-six of the R&O, carriers participating in non-initialized phone donation programs and manufacturers of 911-only phones have to program each handset with 123-456-7890 as its telephone number/mobile identification number. This will involve a one-time modification. Software adjustments for wireless and wireline carriers to accept and disperse the number to PSAPs to identify the calls as coming from phones which cannot be called back will also involve a one-time modification. As also indicated, carriers participating in non-initialized phone donation programs and manufacturers of 911-only phones have to label each handset and institute education programs so that users of non-initialized phones will be apprised of their limitations. The labeling requirement is also a one-time modification. Education requirements for carriers and manufacturers are described in paragraph forty-two of the R&O.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among

others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

19. The issue of providing a solution to the non-initialized phone dilemma is of interest to small entities representing the public service community, and the wireless carrier and equipment manufacturing industries. As noted, most PSAPs are small entities and many carriers and equipment manufacturers are small entities. Public service entities, representing the views of PSAPs, on the one hand, are justifiably concerned with eliminating the possibility of delays in emergency response time due to their inability to contact callers using non-initialized phones to request vital location information. This incapability strains the already limited resources of PSAPs. Carriers and equipment manufacturers share PSAP concerns with impaired response time in emergency situations, but are also concerned with the practicalities of whether a technical solution is readily available at a cost that will not discourage the sale or the donation of non-initialized phones.

20. The Commission, in reaching a decision, carefully weighed the possible negative impact on all the small entities involved in the problem of non-initialized phone use in emergency situations, and found that a network-based technical solution to provide call-back capability to all non-initialized phones is not presently feasible. Instead, the Commission requires that non-initialized handsets donated through carrier-sponsored programs and newly manufactured 911-only phones be programmed with 123-456-7890 as their "telephone number," to alert a PSAP that the 911 call is originating from a wireless phone that lacks call-back capability. This will necessitate minor software modifications on the carriers' equipment. Additionally, the Commission requires that these phones be labeled to alert the user of the lack of call-back capability, and that public education programs be instituted to more fully inform non-initialized phone users of their limitations. The Commission finds that these requirements place limited, one-time burdens on carriers and manufacturers of 911-only phones while alerting all the parties involved in an emergency 911

call to the need for quick, precise and complete caller location information, thus reducing the likelihood that emergency response will be delayed and limited PSAP resources misused.

21. The Commission considered a number of alternative solutions to the predicament raised by non-initialized phones used in emergency situations, ranging from the possibility of developing and implementing a technical solution applicable to all non-initialized phones, to the use of labeling and public education programs. Paragraphs eight through twenty-four of the R&O discuss possible technical solutions proposed in the comments. The most widely-discussed technological possibilities involve using either temporary local directory numbers (TLDNs), which are currently used to deliver calls to roamers, or pseudo-mobile identification numbers (pseudo-MINs). In the former instance, it is suggested that TLDNs could be temporarily assigned, via a network mechanism, to non-initialized phones so that a PSAP would have a number to call back if prematurely disconnected. The latter instance would require the use of pseudo-MINs—a string of numbers and/or symbols, unique to each handset, which would be programmed into each non-initialized phone and used by the PSAP to effectuate a call-back. As stated in paragraphs eight through twelve of the R&O, the Commission concluded that the development and implementation of either proposed theory would likely require extensive changes to the networks and would be cost prohibitive. Mandating a call-back solution at this stage would be especially difficult to justify considering the dearth of information received regarding the scope of the problem of PSAPs' inability to contact callers using non-initialized phones for further location information. No data has been provided in this proceeding to show the volume of 911 traffic generated by non-initialized phones, nor the percentage of non-initialized calls which require a call-back to effect an adequate emergency response. Comments regarding the use of TLDNs and pseudo-MINs are summarized in paragraphs sixteen through nineteen of the R&O. A variation of the pseudo-MIN theory was proposed by Richard Levine of Beta Scientific Laboratory, Inc., and is considered in paragraph twenty of the R&O.

22. Paragraphs twenty-two through twenty-three of the R&O consider the possibility of providing call-back to non-initialized wireless phones which use GSM technology. Some commenters

argue against this option, maintaining that the elements of this solution have not been put together in a manner to support this capability, and that even if they were, the operator's network would be at risk of being deluged by calls from closed handsets receiving the same call-back page, which could effectively take down the entire network or a portion of the network. There would be no way for an operator to prevent calls from being placed by a handset, so, these commenters claim, there would be a serious risk of fraud and or terrorist activities.

23. Paragraphs twenty-five through thirty-three of the R&O discuss options regarding carrier-donated handsets. One alternative raised in the FNPRM is a requirement that all carrier-sponsored wireless phone donation programs be service initialized, so that call-back from the PSAPs will be available if needed. The Commission instead concluded that it would be more beneficial to needful individuals if carriers were allowed to continue to choose which program best serves their communities. While call-back may not be available in some instances, the Commission does not find that mandating service-initialization requirements on voluntary industry-led donation programs would be in the best interests of public safety. Many carriers are already participating in service-initialized donation programs, where a dialable telephone number is delivered to the PSAP and is available if a call-back is required. In addition, various service-initialized programs can be tailored by the carriers to provide users with the best available emergency access, while minimizing potential abuse of their programs.

24. In recognition of the concerns of public service entities, while the Commission does not impose a mandate that all carrier-sponsored programs donate only service-initialized phones, we do place requirements on those programs where non-initialized phones are donated. Additionally, in paragraph twenty-seven, the Commission adopts a labeling requirement for programs where a carrier donates service-initialized handsets, but blocks all call-backs to the phone. The label must notify the user that the called party will not be able to call the user back, and that in the event of an emergency, the user should convey the exact location of the emergency to the called party as soon as possible.

25. Finally, the Commission, as stated in paragraphs thirty-eight through forty-two of the R&O, mandates that labels be affixed to each non-initialized phone and that carriers and manufacturers institute public education programs to

alert users of non-initialized phones that call-back is unavailable and that the user should convey exact location information to the 911 operator as soon as possible.

26. *Report to Congress:* The Commission will send a copy of this R&O, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses:

27. The Public Safety Entities' Petition is granted as provided herein and part 20 of the Commission's rules is amended accordingly.

28. The rules promulgated in this R&O shall become effective on October 1, 2002.

29. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this R&O, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18 is amended by revising paragraph (d)(2) and by adding paragraph (l) to read as follows:

§ 20.18 911 Service.

* * * * *

(d) * * *

(2) When the directory number of the handset used to originate a 911 call is not available to the serving carrier, such carrier's obligations under the paragraph (d)(1) of this section extend only to delivering 911 calls and available call party information, including that prescribed in paragraph (l) of this section, to the designated Public Safety Answering Point.

Note to paragraph (d): With respect to 911 calls accessing their systems through the use of TTYs, licensees subject to this section must comply with the requirements in paragraphs (d)(1) and (d)(2) of this section, as to calls made using a digital wireless system, as of October 1, 1998.

* * * * *

(l) *Non-service-initialized handsets.*

(1) Licensees subject to this section that donate a non-service-initialized handset for purposes of providing access to 911 services are required to:

(i) Program 123–456–7890 as the telephone number/mobile identification number into each handset;

(ii) Affix to each handset a label which is designed to withstand the length of service expected for a non-service-initialized phone, and which notifies the user that the handset can

only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(iii) Institute a public education program to provide the users of such handsets with information regarding the limitations of non-service-initialized handsets.

(2) Manufacturers of 911-only handsets that are manufactured on or after October 1, 2002, are required to:

(i) Program each handset with 123–456–7890 as its telephone number/mobile identification number;

(ii) Affix to each handset a label which is designed to withstand the length of service expected for a non-service-initialized phone, and which notifies the user that the handset can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(iii) Institute a public education program to provide the users of such handsets with information regarding the limitations of 911-only handsets.

(3) *Definitions.* The following definitions apply for purposes of this paragraph.

(i) *Non-service-initialized handset.* A handset for which there is no valid service contract with a provider of the services enumerated in paragraph (a) of this section.

(ii) *911-only handset.* A non-service-initialized handset that is manufactured with the capability of dialing 911 only and that cannot receive incoming calls.

[FR Doc. 02–12993 Filed 5–22–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 67, No. 100

Thursday, May 23, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Packaging and Transportation of Radioactive Material; Announcement of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcements of public meetings.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting two public meetings on June 4 and June 24, 2002, to obtain stakeholder comments on its proposed rule that would revise the NRC's regulations on the packaging and transportation of radioactive material to make them compatible with the latest revision of the International Atomic Energy Agency (IAEA) standards and to codify other NRC-initiated changes. The Department of Transportation (DOT) also published its proposed rule to harmonize its regulations with the same IAEA standards, and will be participating in the meetings. The public is invited to the meetings to discuss the two rules.

DATES: The first meeting will be held on June 4, 2002. The second meeting will be held on June 24, 2002.

ADDRESSES: The June 4, 2002, meeting will be held at the Hyatt Regency, 151 East Wacker Drive, Chicago, Illinois 60601. The June 24, 2002 will be held at U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, Room: TWFN Auditorium. Written comments on the proposed rule may be submitted at the meetings, or sent by mail to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemaking and Adjudications Staff. Comments can also be delivered to NRC, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide electronic comments via the NRC's interactive rulemaking website at <http://ruleforum.llnl.gov>.

This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher at (301) 415-5905 (e-mail: CAG@nrc.gov).

You may access documents related to this proposed rule via the NRC's rulemaking website at <http://ruleforum.llnl.gov>. Documents related to this rule may be also examined at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Room O-1F23, Rockville, MD. Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>.

From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or email to pdr@nrc.gov.

Latest information about the meetings will also be posted at NRC's web site at <http://www.nrc.gov>; click on "Public Meeting Schedule."

FOR FURTHER INFORMATION CONTACT: For questions related to the proposed rule, contact: Naiem S. Tanious, Office of Nuclear Materials Safety and Safeguards, Division of Industrial and Medical Nuclear Safety, Rulemaking and Guidance Branch, Mail Stop T9-C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: (301) 415-6103; E-mail: NST@nrc.gov. Questions about the public meeting process should be directed to Francis Cameron; Office of the General Counsel, USNRC, Washington DC 20555-0001; E-mail: FXC@nrc.gov; telephone: (301) 415-1642.

SUPPLEMENTARY INFORMATION: On April 30, 2002 (67 FR 21390), the NRC published a proposed rule for revising 10 CFR Part 71 "Packaging and Transportation of Radioactive Material" for compatibility with IAEA transportation standards [TS-R-1], and for making other NRC-initiated changes.

In addition to the compatibility of Part 71 with the IAEA regulations (TS-R-1), this rulemaking would also address, in part, the unintended

economic impact of NRC's emergency final rule entitled "Fissile Material Shipments and Exemptions" (February 10, 1997; 62 FR 5907) and a petition for rulemaking submitted by International Energy Consultants, Inc. (PRM-71-12; February 19, 1998; 63 FR 8362).

The Commission is soliciting cost-benefit and exposure data from the public and industry to help quantify the impact of the Part 71 proposed amendments. The NRC believes that this data will assist the Commission in: (1) Making a truly informed decision regarding the proposed IAEA compatibility changes, and (2) avoiding the promulgation of amendments that may result in unforeseen and unintended negative impacts. Specifically, the Commission is soliciting: (1) Quantitative information and data on the cost and benefits which might occur if these proposed changes were adopted; (2) operational data on radiation exposures (increased or decreased) that might occur from implementing the proposed changes; (3) whether the changes are adequate to protect the public health and safety; (4) whether other changes should be considered, including providing cost-benefit and exposure data for these suggested changes; and (5) how should specific risk considerations (i.e., data on what can happen, how likely is it, what are the consequences) be factored into the proposed amendments. For more information on this request for data, please review Section III of the Supplementary Information Section of the April 30, 2002, proposed rule (67 FR 21390).

The NRC is holding public meetings to solicit public comment on this proposed rule in Chicago, Illinois on June 4, 2002, and at the NRC's Offices in Rockville, Maryland on June 24, 2002.

The agenda for the June 4, 2002, meeting is Afternoon Session: 1 p.m.-4 p.m., Open House: 12 noon-1 p.m., Evening Session: 7 p.m.-10 p.m., Open House: 6 p.m.-7 p.m.

The agenda for the June 24, 2002 meeting is 9 a.m.-5 p.m., Open House: 8 a.m.-9 a.m.

The intent of the open house session is to present the opportunity for informal interactions between attendees, both NRC and DOT staff and members of the public.

The first meeting will be conducted as townhall discussions between attending

stakeholders representing a broad spectrum of interests that may be affected by this proposed rule and the NRC and DOT staff. The second meeting will be conducted as roundtable discussions among invited participants representing a broad spectrum of interests that may be affected by this proposed rule. The interests in both meetings include the regulated transportation community, non-regulated entities (that may be affected by this proposed rule, e.g. petroleum and mineral industries), citizen and environmental groups, Agreement States, the Department of Energy (DOE), DOT, and other Federal and State Agencies. Although the focus in the second meeting is on the discussions among the invited participants, the meeting is open to the public, and the public is welcome to make comments at the meeting. Individuals interested in participating in roundtable discussions should contact Mr. Cameron (as indicated in the **FOR FURTHER INFORMATION CONTACT** section). A list of participants will be available at the meetings.

Dated at Rockville, Maryland, this 16th day of May, 2002.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

*Chief, Rulemaking and Guidance Branch,
Division of Industrial and Medical Nuclear
Safety, Office of Nuclear Material Safety and
Safeguards.*

[FR Doc. 02-12991 Filed 5-22-02; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-398-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require revising the Limitations Section of the FAA-approved Airplane Flight Manual to ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. Such

uncommanded movement could result in reduced controllability of the airplane, and consequent significant increased fuel consumption during flight, which could necessitate an in-flight turn-back or diversion to an unscheduled airport destination. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 24, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-398-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-398-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-398-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-398-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes equipped with any spoiler servo control having part number (P/N) 1386A0000-01 or 1386B0000-01, or P/N 1387A0000-01 or 1387B0000-01. The DGAC advises that it has received several reports of incidents where a spoiler servo control was not locked in the retracted position during flight. These failures were caused by the loosening of an insert screw in the pressure relief valve located in the spoiler servo control. The DGAC attributes this defect to the assembly process of the pressure relief valve. A loose insert screw in the pressure relief valve, if not corrected, could prevent the servo control of that spoiler from locking in the retracted position and cause uncommanded movement of the spoiler during flight. Such uncommanded movement could result in reduced controllability of the

airplane, and consequent increase in fuel consumption during flight, which could result in an in-flight turn-back or diversion to an unscheduled airport destination.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, the proposed AD would require revising the Limitations Section of the of the FAA-approved Airplane Flight Manual (AFM) to ensure the flightcrew is advised of in-flight procedures in the event of uncommanded movement of the spoiler during flight.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 5 Model A330 and A340 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM

revision, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$300, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the 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 is contained 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, pursuant to the authority delegated to me by the Administrator, the 1 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. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–398–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; equipped with any spoiler servo control (SSC) having part number (P/N) 1386A0000–01 or 1386B0000–01, or P/N 1387A0000–01 or 1387B0000–01.

Compliance: Required as indicated, unless accomplished previously.

To ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight, which could result in reduced controllability of the airplane and consequent significant increased fuel consumption during flight, and could result in an in-flight turn-back or diversion to an unscheduled airport destination, accomplish the following:

Revision to Airplane Flight Manual (AFM)

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by including the procedures listed in Figure 1 of this AD. This revision may be done by inserting a copy of Figure 1 into the AFM.

BILLING CODE 4910–13–P

Figure 1

“PROCEDURE:

- If **“F/CTL SPLR FAULT”** is triggered
 - F/CTL S/D page.....CHECK
- If the affected spoiler is not indicated extended amber:

The spoiler is faulty in the retracted position. In such a case, the specific OEB procedure does not apply.

 - LDG DIST PROC.....APPLY

Multiply the landing distance by 1.1 for 3 or 4 spoilers lost per wing.
Multiply the landing distance by 1.2 for 5 or 6 spoilers lost per wing.
- If the affected spoiler is indicated extended amber, apply the following procedure:

IN CRUISE

CAUTION

Disregard FMGC fuel predictions, as they do not take the increase in fuel consumption into account.

 - FUEL CONSUMPTION INCREASE.....APPLY

Apply 18.5% increase in the fuel consumption.

 - IN-FLIGHT TURN BACK/DIVERSION.....CONSIDER

In-flight turn back or diversion may have to be considered due to this fuel penalty.

 - MAX ACHIEVABLE ALTITUDE DECREASE.....CONSIDER

With the maximum spoiler deflection, the maximum altitude in ISA conditions may decrease by 4,500 feet.

FOR LANDING

 - FOR LDG.....USE FLAP 3

Use CONF 3 for landing to avoid possible buffeting, which, however, may be high depending on the failed spoiler.

 - VAPP.....NORM
 - LDG DIST.....x 1.1”

This AD may then be removed from the AFM.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001-608(B) and 2001-609(B), both dated December 12, 2001.

Issued in Renton, Washington, on May 15, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-12948 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-02-045]

RIN 2115-AA97

Safety and Security Zones; Portsmouth Harbor, Portsmouth, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety and security zones in the Captain of the Port, Portland, Maine zone, 1 mile ahead, ½ mile astern, and 1000-yards on either side of any vessel capable of carrying Liquefied Petroleum Gas (LPG). This rulemaking also proposes to establish safety and security zones of 500-yards around any LPG vessel while it is moored at the LPG receiving facility located on the Piscataqua River in Newington, New Hampshire. Entry or movement within these zones, without the express permission of the Captain of the Port, Portland, Maine or his authorized patrol representative, is strictly prohibited.

DATES: Comments and related materials much reach the U. S. Coast Guard on or before July 22, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office, Portland, 103 Commercial Street, Portland, Maine 04101. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Portland, Maine between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) W. W. Gough, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01-02-045, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland, Maine at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts, and flown into the World Trade Center in New York, New York, inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence

officials warn that future terrorist attacks are possible. Due to these heightened security concerns, safety and security zones are prudent for Liquefied Petroleum Gas (LPG) tank vessels, which may be likely targets of terrorist attacks due to the flammable nature of LPG and the serious impact on the Port of Portsmouth, New Hampshire and surrounding areas that may be incurred if an LPG vessel was subjected to a terrorist attack.

On November 20, 2001, a temporary final rule (TFR) entitled "Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone" was published in the **Federal Register** (66 FR 58064). This TFR, effective from November 9, 2001 until June 21, 2002, suspended 33 CFR 165.103 and temporarily established the safety and security zone being permanently proposed by this Notice of Proposed Rulemaking (NPRM). The TFR has been extended until August 15, 2002 to allow time to develop the permanent rule being proposed (67 FR 30807, May 8, 2002).

Discussion of Proposed Rule

This rulemaking proposes to establish safety and security zones in a radius around LPG vessels while the vessels are moored at the LPG receiving facility on the Piscataqua River in Newington, New Hampshire. It would also create moving safety and security zones any time a LPG vessel is within the Captain of the Port, Portland, Maine zone, as defined in 33 CFR 3.05-15, in the internal waters of the United States and the navigable waters of the United States. Under the Ports and Waterways Safety Act, the navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law.

This rulemaking proposes to establish safety and security zones with identical boundaries covering the following areas of the Captain of the Port, Portland, Maine zone: (a) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas vessel while it is moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and (b) except as provided in paragraph (a) of this section, in the waters of the Captain of the Port, Portland, Maine zone, all waters one mile ahead, one half mile astern, and 1000-yards on

either side of any Liquefied Petroleum Gas vessel.

This proposed rulemaking would revise a current safety zone for transits of tank vessels carrying Liquefied Petroleum Gas in Portsmouth Harbor, Portsmouth, New Hampshire. Title 33 CFR 165.103 currently provides for a safety zone during the transit of loaded LPG vessels as follows: The waters bounded by the limits of the Piscataqua River Channel and extending 1000-yards ahead and 500-yards astern of tank vessels carrying LPG while the vessel transits Bigelow Bight, Portsmouth Harbor, and the Piscataqua River to the LPG receiving facility at Newington, New Hampshire until the vessel is safely moored and while the vessel transits outbound from the receiving facility through the Piscataqua River, Portsmouth Harbor and Bigelow Bight until the vessel passes the Gunboat Shoal Lighted Bell Buoy "1" (LLNR 185). Title 33 CFR 165.103 recognizes the safety concerns with transits of large tank vessels, but is inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts. National security and intelligence officials warn that future terrorist attacks against civilian targets are possible. Due to the flammable nature of LPG vessels and the impact ignition of this cargo would have on Portsmouth Harbor, areas along the Piscataqua River and surrounding areas, increased protection of these vessels is necessary.

In comparison to 33 CFR 165.103, this proposed rulemaking would provide increased protection for LPG vessels as follows: It would establish 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire. It would also provide continuous protection for LPG vessels by establishing safety and security zones 1 mile ahead, ½ mile astern, and 1000-yards on each side of LPG vessels anytime a vessel is within the waters of the Captain of the Port, Portland, Maine zone rather than limiting the protection to vessels carrying LPG that are transiting to and from the facility. It would also extend the zones to 1000-yards on either side of the vessel rather than limiting the zone to the limits of the Piscataqua River Channel.

The increased protection provided in this proposed rulemaking also recognizes the safety concerns associated with an unloaded LPG vessel. Currently, 33 CFR 165.103 only establishes a safety zone around a loaded LPG tank vessel or while the vessel is transferring its cargo. This

proposed rulemaking would establish safety and security zones around any LPG vessel, loaded or unloaded, any time a LPG vessel is located in the Captain of the Port, Portland, Maine zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These proposed zones would provide necessary protection to unloaded vessels, which continue to pose a safety and security hazard due to ignition of the vapor material. This proposed rulemaking also recognizes the continued need for safety zones around LPG vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a large tank vessel.

No person or vessel would be able to enter or remain in the proposed safety and security zones at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a safety and security zone would be required to obey any direction or order of the Captain of the Port, Portland, Maine. The Captain of the Port, Portland, Maine would be able to take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person would be able to board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This proposed rulemaking is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the

regulatory policies and procedures of DOT is unnecessary for the following reasons: (a) The proposed safety and security zones would encompass only a portion of the Captain of the Port, Portland, Maine zone around the transiting LPG vessel, allowing vessels to safely navigate around the zones without delay (b) while the LPG vessel is transiting the Piscataqua River, maritime advisories would be broadcast to advise the maritime community of the safety and security zones, allowing vessels to plan their safe navigation around the zones (c) the proposed safety and security zones while the vessel is moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire, would be small enough to allow vessels to navigate safely around the zones without delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons enumerated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605 (b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. There is no indication the present rule has been burdensome on the maritime public. No letters commenting on the present rule have been received from the public.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how, and to what degree, this rule would economically affect it.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant

(Junior Grade) W. W. Gough, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780-3251.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise § 165.103 to read as follows:

§ 165.103 Safety and Security Zones; LPG Vessel Transits in Captain of the Port Portland, Maine Zone, Portsmouth Harbor, Portsmouth New Hampshire.

(a) *Location.* The following areas are safety and security zones: (1) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas (LPG) vessel while it is moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and (2) except as provided in paragraph (a)(1) of this section, in the waters of the Captain of the Port, Portland, Maine zone, all waters one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or

movement within these zones is prohibited unless previously authorized by the Captain of the Port (COTP), Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port, Portland, Maine.

(3) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Portland, Maine or his authorized patrol representative.

Dated: May 13, 2002.

M.P. O'Malley,

Commander, Coast Guard, Captain of the Port, Portland, ME.

[FR Doc. 02-13006 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-001-0067; FRL-7215-9]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver PM₁₀ Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 30, 2001, the Governor of the State of Colorado submitted a State Implementation Plan (SIP) revision for the purpose of establishing a redesignation for the Denver, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM₁₀) under the 1987 standards. The Colorado Air Pollution Control Division's submittal, among other things, documents that the Denver area has attained the PM₁₀ national ambient air quality standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for the area demonstrating maintenance of the PM₁₀ NAAQS for thirteen years. EPA is proposing to approve the redesignation

request and maintenance plan because the State has met the applicable requirements of the Clean Air Act, as amended. This action is being taken under sections 107, 110, and 175A of the Clean Air Act (Act).

DATES: Written comments must be received on or before June 24, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202-2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202-2466. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312-6436.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

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I. EPA's Proposed Action

A. What Action Is EPA Proposing To Take?

We are proposing to approve the Governor of Colorado's submittal of July 30, 2001, that requests a redesignation for the Denver nonattainment area to attainment for the 1987 PM₁₀ standards. We are using 1998-2000 ambient air quality data from the Denver nonattainment area as the basis for our decision. We are also proposing to approve the maintenance plan for the Denver PM₁₀ nonattainment area, which was submitted with the State's July 30,

2001 redesignation request. In conjunction with the maintenance plan, the Governor also submitted revisions to Colorado's Regulation No. 1, "Particulates, Smokes, Carbon Monoxide, & Sulfur Oxides," and Colorado's Regulation No. 16, "Street Sanding Emissions." We are proposing to approve this request, the maintenance plan and its accompanying regulation revisions because the Colorado Air Pollution Control Division (Colorado) has adequately addressed all of the requirements of the Act for redesignation to attainment applicable to the Denver PM₁₀ nonattainment area. Upon the effective date of a subsequent final action, the Denver area's designation status under 40 CFR part 81 will be revised to attainment. By using "Denver" or the "Denver area," we mean Denver, Jefferson, and Douglas Counties, as well as part of Boulder, Adams and Arapahoe Counties.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

II. Summary of Redesignation Request and Maintenance Plan

A. What Requirements Must Be Followed for Redesignations to Attainment?

In order for a nonattainment area to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the Clean Air Act (CAA) must be met:

- (i) We must determine that the area has attained the NAAQS;
- (ii) The applicable implementation plan for the area must be fully approved under section 110(k) of the Act;
- (iii) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
- (iv) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and,
- (v) The State containing such area must meet all requirements applicable to the area under section 110 and part D of the CAA.

Our September 4, 1992 guidance entitled "Procedures for Processing

Requests to Redesignate Areas to Attainment" (referred to in this action as the Calcagni Memorandum) outlines how to assess the adequacy of redesignation requests against the conditions listed above.

On July 30, 2001, the Governor of Colorado submitted a revision to the SIP for the Denver area and a request that we redesignate the area to attainment for PM₁₀. The following is a brief discussion of how Colorado's redesignation request and maintenance plan meets the requirements of the Act for redesignation of the Denver area to attainment for PM₁₀.

B. Does the Denver Redesignation Request and Maintenance Plan Meet the CAA Requirements?

i. Attainment of the PM₁₀ NAAQS

Whether an area has attained the PM₁₀ NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR part 50, appendix K. A State must demonstrate that an area has attained the PM₁₀ NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum PM₁₀ concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. In making this showing, three consecutive years of complete air quality data must be used.

Between 1998 and 2000, Colorado operated thirteen PM₁₀ monitors, which were either State and Local Air Monitoring Stations (SLAMS) or National Air Monitoring Sites (NAMS), in the Denver PM₁₀ nonattainment area. As part of the redesignation request for Denver, Colorado submitted ambient air quality data from the monitoring sites which demonstrates that the area has attained the PM₁₀ NAAQS. This air quality data had been quality-assured and placed in AIRS on a quarterly basis. Only one exceedance of the 24-hour PM₁₀ NAAQS was measured between 1998 and 2000. In 1999, the Adams City monitor recorded a 24-hour value of 160 µg/m³, which is an exceedance. Because data collection was less than 100% at this monitoring site, the expected exceedance rate, as calculated according to 40 CFR part 50, appendix K, for 1999 at this site was 1.16. For 1998 and 2000, it was 0.0. Thus, the three-year average was less than 1.0, which indicates the Denver area attained the 24-hour PM₁₀

NAAQS. All other sites had expected exceedance rates of 0 for this three-year period. In addition, there have been no reported exceedances of the PM₁₀ NAAQS so far in 2001. Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that the Denver area is also in attainment with the annual PM₁₀ NAAQS. There was no violation of the annual standard for the three year period from 1998 through 2000. Further information on PM₁₀ monitoring is presented in Chapter 3, section B of the redesignation request and maintenance plan. We have evaluated the ambient air quality data and believe that Colorado has adequately demonstrated that the PM₁₀ NAAQS has been attained in the Denver area.

ii. State Implementation Plan Approval

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Those States containing initial moderate PM₁₀ nonattainment areas were required to submit a SIP by November 15, 1991 which demonstrated attainment of the PM₁₀ NAAQS by December 31, 1994. However, under section 188(d) of the CAA, moderate PM₁₀ nonattainment areas are eligible for up to two one-year extensions of their attainment dates if they meet the requirements of the Act. Colorado requested an attainment date extension for Denver and it was granted on October 6, 1995 (60 FR 52312). The Denver nonattainment area subsequently attained the NAAQS by December 31, 1995, which was the area's applicable attainment date following the granting of the attainment date extension. Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k). We approved the PM₁₀ contingency measures for the area on September 23, 1996 (61 FR 49682). We approved the PM₁₀ SIP for Denver on April 17, 1997 (62 FR 18716) as meeting those moderate PM₁₀ nonattainment plan requirements that were due to EPA on November 15, 1991. The transportation budgets required under the transportation conformity rule were approved on March 31, 1998 (63 FR 15294).

iii. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The control measures in the Denver PM₁₀ element of the Colorado SIP were adopted by the AQCC on October 19, 1995, and were approved by the EPA on April 17, 1997 (62 FR 18716). The SIP element's emission control plan was based on emission reductions from stationary source controls, re-entrained road dust controls, woodburning restrictions, and mobile source emission control programs. These permanent and enforceable control measures are explained in more detail below.

As part of the PM₁₀ SIP, Denver has been implementing the requirements of Colorado Regulation No. 1 "Particulates, Smokes, Carbon Monoxide, & Sulfur Oxides." The portion of this regulation for which PM₁₀ emission reduction credits are used provides stationary source emission control regulations. These control measures include regulation limits on specific units for precursor emissions (NO_x and SO₂) at Public Service Company of Colorado's Cherokee, Arapahoe and Valmont Electric Generating Stations. There are also restrictions on the use of oil as a backup fuel for natural gas to control particulate emissions from the following stationary sources in the Denver area: Public Service Company of Colorado's Valmont and Zuni Electric Generating Stations, Public Service Company of Colorado's Delegany Steam Generating Station, University of Colorado Health Sciences Center (Fitzsimmons), U.S. Department of Energy's Rocky Flats Plant, Gates Rubber Company, and Trigen-Colorado Energy Corporation¹ (this requirement only applies to the company's Golden, Colorado facility). This regulation requires that natural gas is the only fuel oil to be used from November 1 to March 1 of each year

¹ The federally approved version of Regulation No. 1 lists this source as Coors Brewing Company, Coors Brewery, Golden, CO; the boiler units at the brewery were sold to Trigen-Colorado Energy Corporation since that version of the regulation was approved. Colorado has subsequently made revisions to this regulation, which include changing the name for this facility. Colorado will submit these revisions to EPA in the future in order for them to be federally approved.

except under certain circumstances that are explained in the regulation. In addition, there are limitations on primary PM₁₀ emissions from fuel burning equipment that apply to the boiler units at Public Service Company of Colorado's Arapahoe, Cherokee, and Zuni Electric Generating Stations, as well as Trigen-Colorado Energy Corporation. There are also particulate limitations on all sources with incinerators, limitations on all stationary sources with manufacturing processes (as defined in Colorado's Common Provisions Regulation), and regulations for any source of fugitive particulates. (See Colorado's Regulation No. 1 for more details on these restrictions.)

Denver has also been implementing the requirements of Colorado Regulation No. 4 "New Wood Stoves and the use of Certain Woodburning Appliances During High Pollution Days." The primary strategy of Regulation No. 4 is the mandatory wood burning curtailment program that prohibits most wood burning activity on "high pollution days" between November 1st and March 31st of each year in the Denver metropolitan area. Regulation No. 4 also requires all new wood burning stoves and fireplace inserts sold in Colorado to meet both State and Federal emission control standards. In addition to this State regulation, our April 17, 1997 approval of the PM₁₀ SIP incorporated 19 local woodburning ordinances and resolutions.

Colorado's Regulation No. 16 covers street sanding and sweeping requirements. Under this regulation, street sand is required to meet stringent specifications to reduce the amount of fines and increase the durability of the sanding materials. With the implementation of this regulation, most of the Denver area governments were required to reduce the amount of street sand applied to their roadways by 20 percent from a base sanding amount (as defined in Colorado Regulation No. 16, this is an average amount of street sanding material applied per lane mile driven by maintenance trucks during snow and ice removal operations according to 1989 data), with the exception of the City of Denver. Denver was required to reduce the amount of street sanding materials applied by 30 percent from the base sanding amount. Emissions in the Central Denver area and the Interstate 25 Corridor area were to be reduced by 50 percent from the base sanding amounts. The street sweeping requirements for the Denver nonattainment area include additional street sweeping in the Denver central

business district and the Interstate 25 Corridor area after each sanding event.

The mobile source control measures implemented with the PM₁₀ SIP include Colorado's Regulation No. 11, "Motor Vehicle Emissions Inspection Program," Regulation No. 12 "Diesel Inspection/Maintenance Program," and Regulation No. 13 "Oxygenated Fuels Program."

Stationary source construction permits for Public Service Company of Colorado's Cherokee Electric Generating Station, Purina Mills, Electron Corporation, Trigen-Colorado Energy Corporation, Rocky Mountain Bottle Company (which includes earlier permits that were issued in 1993 under the former name of Coors Brewing Company), and Conoco Refinery were incorporated by reference in our April 17, 1997 approval of the PM₁₀ SIP. Thus, EPA also viewed these permits as enforceable control measures under the SIP.

Colorado Regulation No. 3 "Air Contaminant Emissions Notices" and No. 6 "Standards of Performance for New Stationary Sources" also provide for stationary source controls. The federally approved portions of these regulations are part of the state-wide SIP and weren't approved specifically with the Denver PM₁₀ SIP.

We have evaluated the various State and Federal control measures, the original 1989 base year emission inventory and the original 1995 attainment year emission inventory, and believe that the improvement in air quality in the Denver nonattainment area has resulted from emission reductions that are permanent and enforceable.

iv. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 107(d)(3)(E) of the Act requires that, for a nonattainment area to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the Act. The plan must

demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, the State must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10 year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. (See sections 175A(b) and (d).) Our September 4, 1992 guidance outlines 5 core elements that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are explained in detail below.

a. Attainment Inventory

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (see 57 FR 13498, April 16, 1992) and the September 4, 1992, Calcagni Memorandum referenced above. Under our interpretations, PM₁₀ maintenance plans should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to maintain the NAAQS.

An emissions inventory was developed and submitted with the PM₁₀ maintenance plan for the Denver area on July 30, 2001. This submittal contains a 1995 attainment year inventory as well as interim-year projection inventories for 2002, 2003, 2005, 2010 and 2015. The 1995 attainment inventory is an updated version of the attainment inventory submitted on March 30, 1995 with the PM₁₀ SIP. Due to the nature of Denver's past 24-hour PM₁₀ problems, these inventories reflect emission estimates for an average winter weekday after a snow event. The inventories include emissions from all sources of PM₁₀ and PM₁₀ precursor emissions

(nitrogen oxides and sulfur dioxide (NO_x and SO₂)) within the modeling domain for the Denver area. (This modeling domain is actually smaller than the Denver nonattainment area due to technical modeling limitations, but does include all areas with the expected maximum PM₁₀ concentrations.) The precursor emissions are important because filter analyses performed in conjunction with chemical mass balance modeling, for the attainment SIP, indicated that a significant portion (35%) of the PM₁₀ on the filters consisted of secondary ammonium sulfate and nitrate.

Emission estimates for the inventories were updated based on the most recent demographic and vehicle miles traveled (VMT) estimates from the Denver Regional Council of Governments' November 2000 conformity analysis. This includes population, household, employment and daily VMT estimates. The major contributors identified in the attainment year and projection inventories were on-road mobile source emissions (including vehicle exhaust and re-entrained road dust), fugitive dust emissions from unpaved roads, residential heating emissions, primary PM₁₀ emissions from stationary sources, and secondary emissions of NO_x and SO₂ from stationary sources and on-road and off-road mobile sources. More detailed descriptions of the 1995 attainment year inventory and the 2002, 2003, 2005, 2010 and 2015 projected inventories are documented in the maintenance plan in Chapter 4, sections B and C, and in Colorado's technical support documentation. Colorado's submittal contains detailed emission inventory information that was prepared in accordance with EPA emission inventory guidance.² Summary emission figures from the 1995 attainment year and the interim projected years are provided in Table II. 1, 2 and 3 below.

TABLE II. 1.—SUMMARY OF PRIMARY PM₁₀ EMISSIONS IN TONS PER DAY FOR DENVER

	1995	2002	2003	2005	2010	2015
Stationary Sources	7.7	26.1	25.2	25.5	26.1	26.7
Residential Heating*	5.1	4.7	4.7	4.6	4.6	4.5
Other Area Sources**	11.8	12.1	12.1	12.3	12.2	12.1
Non-Road Mobile Sources***	1.2	1.1	1.1	1.0	1.2	1.2
On-Road Mobile Sources****	41.2	42.3	43.3	44.8	48.5	51.1
Total	66.9	86.3	86.5	88.1	92.5	95.6

* Residential Heating includes natural gas, woodstove and fireplace emissions

** Other Area Sources includes fugitive dust from construction and unpaved roads as well as charbroiler emissions

*** Non-Road Mobile Sources includes emissions from all airports, railroads, and industrial and construction equipment

² EPA's current guidance on the preparation of PM₁₀ emission inventories includes, "PM₁₀ Emission Inventory Requirements," September

1994, "Emission Inventory Improvement Program Technical Report Series, Volumes I-VII," July 1997 and September 1999, "Revised 1999 National

Emission Inventory Preparation Plan," February 2001.

**** On-Road Mobile Sources includes exhaust and re-entrained road dust

TABLE II. 2.—SUMMARY OF NO_x EMISSIONS IN TONS PER DAY FOR DENVER

	1995	2002	2003	2005	2010	2015
Stationary Sources	137.8	151.2	133.9	128.8	130.4	132.2
Mobile Exhaust	119.4	137.7	130.4	109.6	104.0	87.8
Non-Road Mobile Sources*	22.3	24.9	25.0	27.7	30.3	33.4
Residential Heating**	33.2	39.5	40.5	42.6	46.7	49.8
Total	312.7	353.3	329.8	308.7	311.4	303.2

* Non-Road Mobile Sources includes airport and other non-road emissions

** Residential Heating includes natural gas and woodburning emissions

TABLE II.3.—SUMMARY OF SO₂ EMISSIONS IN TONS PER DAY FOR DENVER

	1995	2002	2003	2005	2010	2015
Stationary Sources	175.5	200.2	180.5	181.1	182.0	183.1
Mobile Exhaust	2.5	5.6	5.8	6.1	2.1	2.2
Non-Road Mobile Sources*	1.9	2.3	2.5	2.5	2.8	3.1
Residential Heating**	0.2	0.3	0.3	0.4	0.4	0.4
Total	180.1	208.4	189.1	190.1	187.3	188.8

* Non-Road Mobile Sources includes airport and other non-road emissions

** Residential Heating includes natural gas and woodburning emissions

We note that these tables show significant changes in some source categories and in most cases this is the result of changes to control strategies that will be implemented in future years. This is explained in the following section. Other minor changes in emission categories can be explained by demographics, as explained above. The projected reductions in the residential heating category are from Colorado's estimates for less woodburning in future years. We believe this projection of less woodburning is reasonable.

There have also been several changes made to the stationary source emissions inventory since the development of the PM₁₀ SIP for the area. One source, Brannan Sand and Gravel, was treated as a major source of primary particulates in the SIP and modeled at an allowable emission level of 180 tons per year of PM₁₀. Since the development of the PM₁₀ SIP, Brannan Sand and Gravel replaced its existing asphalt plant with a new, lower emitting asphalt plant and retained a new permit reflecting this reduction. The result of this reduction was that Brannan Sand and Gravel's emissions now fall below the major source threshold of 100 tons per year primary PM₁₀, as its new allowable emissions under the permit are 4.2 tons per year of PM₁₀. The source is now treated as an area source in the maintenance plan and modeled at its actual emission rate with a growth factor for future years. A correction was also made to the emission inventory to resolve an error made in the emission inventory for the nonattainment SIP

which underestimated emissions from the Conoco petroleum refinery.

In addition to the above changes, a new major source of primary particulates (Robinson Brick) was added to the emissions inventory with the maintenance plan because its emissions of PM₁₀ were found to be over 100 tons per year. Robinson Brick was then modeled using the sources' allowable emission rates for primary PM₁₀. Following our review, we have determined that Colorado prepared an adequate attainment inventory for the area.

b. Maintenance Demonstration

The September 4, 1992, Calcagni Memorandum states that where modeling was relied on to demonstrate maintenance, the plan is to contain a summary of the air quality concentrations expected to result from the application of the control strategies. Also, the plan is to identify and describe the dispersion model or other air quality model used to project ambient concentrations. The maintenance demonstration for the Denver area uses area-wide dispersion modeling for primary PM₁₀ and roll-forward modeling for secondary particulate concentrations, which was the same level of modeling used in the original attainment demonstration for the moderate PM₁₀ SIP for Denver. The regional air model (RAM) was used for primary PM₁₀ area, mobile and minor point sources, and an industrial source complex model (ISC) was used for primary PM₁₀ from major point sources modeled at allowable emission levels.

Secondary particulate concentrations are projected from measured concentrations during high concentration periods between 1987 and 1992. The projected change in total NO_x and SO₂ emissions from the baseline to future years is also factored into the analysis.

The maintenance plan delineates between the stationary sources considered as major under the SIP and those sources which are considered as minor. The same methodology was used for the Denver PM₁₀ maintenance plan as was used in the nonattainment SIP. All sources emitting over 100 tons per year of primary PM₁₀ were identified as major stationary sources and modeled in the maintenance demonstration using either the sources' allowable emission limit as specified in the maintenance plan, or that sources' maximum emission potential (PTE). All other sources with primary PM₁₀ emissions were treated as area sources in the SIP context and modeled using the sources' current actual emissions with a projected growth factor. The major stationary sources of primary PM₁₀ identified in the maintenance plan are: Conoco Denver Refinery, Public Service Company of Colorado's Cherokee, Arapahoe and Zuni Electric Generating Stations, Robinson Brick, Trigen-Colorado Energy Corporation, and the Ultramar Diamond Shamrock refinery.

The methodology used for the stationary sources of secondary emissions (NO_x and SO₂) is also the same as that used in the nonattainment SIP. Sources were modeled using actual emission rates of NO_x and SO₂ if they

met two criteria. The first criteria is that the difference between modeling the source at anticipated actual emission rates versus the allowable emission levels must be less than 1 $\mu\text{g}/\text{m}^3$ using the secondary particulate roll-forward model. The second criteria was that the cumulative difference for all the sources modeled using actual emissions must be no more than 2 $\mu\text{g}/\text{m}^3$. The sources modeled as major sources of precursor emissions in the maintenance demonstration are: Public Service Company of Colorado's Cherokee,

Arapahoe and Valmont Electric Generating Stations, Trigen-Colorado Energy Corporation, and Rocky Mountain Bottle Company.

Since the modeling process is based on five years of meteorological data, the highest 6th highest 24-hour PM_{10} value from all receptors is used to determine if the PM_{10} standard will be maintained in future years. After an analysis, Colorado concluded that the Adams City ambient air quality monitor (located north of Cherokee Electrical Generating Station in Adams County)

had the highest 6th highest 24-hour PM_{10} concentration for 2002. For all other projection years (2003, 2005, 2010, and 2015) the Continuous Air Monitoring Project (CAMP) monitor, located at the intersection of Broadway and Champa Street in downtown Denver, was the maximum concentration monitor. This analysis is further detailed in Chapter 4, section C of the maintenance plan and in the Colorado's TSD and is reproduced in Table II.—4 below.

TABLE II.4.—DENVER PM_{10} MODELING RESULTS IN $\mu\text{g}/\text{M}^3$:

Sources	2002 (Adams City)	2003 (CAMP)	2005 (CAMP)	2010 (CAMP)	2015 (CAMP)
Area/Mobile/Minor Point Sources (RAM)	80.9	81.1	75.7	80.5	84.7
Major Point Sources (ISC)	0.64	0.01	0.32	0.32	0.32
Secondary Roll-forward	52.6	48.4	46.6	46.6	46.1
Background	14.4	15.4	17.7	17.7	17.7
Total Concentration	148.6	144.9	140.3	145.2	148.8

Since Colorado's submittal of the maintenance plan, Colorado has made some minor technical corrections to the maintenance demonstration. Colorado has now factored maximum potential primary PM_{10} emissions for the Conoco and Ultramar Diamond Shamrock petroleum refineries into the modeling analysis to show maintenance of the PM_{10} standard. In the official July 30, 2001 submittal of the maintenance plan, Colorado had calculated maximum potential to emit for the fluid catalytic cracking units (FCCUs) by using the most conservative AP-42 emission factor and adding an 85% control efficiency to that factor. After the submittal of the maintenance plan, we discovered that this was an inappropriate calculation because the AP-42 emission factors for FCCUs already take into account the 85% control efficiency for internal cyclones that are inherent to the functioning of the units. On April 5, 2002, Colorado submitted a technical correction to the maintenance plan modeling analysis which removed credits for an 85% control efficiency for the FCCU at the two refineries. Colorado re-ran the modeling analysis and found that they could still demonstrate maintenance for the duration of the maintenance plan while modeling the sources at maximum potential to emit.

However, because future year projections in the maintenance plan were below the PM_{10} standard of 150 $\mu\text{g}/\text{m}^3$, under 40 CFR 93.124, Colorado was allowed to allocate the difference or

"safety margin" (1.1 $\mu\text{g}/\text{m}^3$ in 2015), to the NO_x emissions budget. This worked out to be equivalent to 13 tons per day of NO_x . Therefore, the 101 tons/day NO_x emissions budget includes this "safety margin" of 13 tons/day. (The mobile source budgets are explained in more detail later in this proposed action.)

Colorado's correction to the maintenance demonstration for Conoco and Ultramar Diamond Shamrock only resulted in a 0.3 $\mu\text{g}/\text{m}^3$ impact for 2005, 2010 and 2015³, and did not increase the maintenance demonstration to a level above 150 $\mu\text{g}/\text{m}^3$. However, because the entire "safety margin" from 2015 was allocated to the mobile source emission budget for NO_x , it appeared that either the resulting emission budget would need to be changed, or another source in the SIP would need to be reduced to offset the 0.3 $\mu\text{g}/\text{m}^3$ increase. But, a recent federal consent decree will require significant emission reductions at the Conoco facility before 2015.

On December 20, 2001, a proposed Complaint and Consent Decree in *United States v. Conoco Inc.* was lodged with the United States District Court for the Southern District of Texas. (See 67 FR 107 for the notice of lodged consent decree.) Under the proposed consent decree, Conoco Denver Refinery's FCCU is required to comply with a New Source Performance Standard (NSPS),

³ The State determined that the entire 0.3 $\mu\text{g}/\text{m}^3$ impact results from emission inventory increases at the Conoco FCCU; no impacts result from re-calculation of values for Ultramar Diamond Shamrock.

Subpart J, emissions limit for PM of 1 pound per 1000 pounds of coke burned by no later than June 30, 2006. This restriction will limit Conoco to approximately 67 tons per year of primary PM_{10} , which is far less than the 1233 tons per year which Colorado used to re-model Conoco's emissions and less than the 185 tons per year Colorado used in the maintenance plan; this new limit will more than offset the 0.3 $\mu\text{g}/\text{m}^3$ increase which would have affected the year 2015 "safety margin" allocation. Because it is based on an NSPS requirement, this new PM limit at Conoco will be permanent. We anticipate court approval of the Conoco consent decree in the near future. In the event court approval is not forthcoming, we may need to reevaluate this proposal.

i. Control Strategy

According to the Calcagni memorandum, any assumptions concerning emission rates must reflect permanent, enforceable measures. A State can't take credit in the maintenance demonstration for reductions unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. States are expected to maintain implemented control strategies despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions. Emission reductions from source shutdowns can be considered permanent and

enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.

In preparing the Denver PM₁₀ maintenance plan, Colorado has chosen to make revisions to its control strategy. However, as demonstrated above, the Denver area is expected to maintain the PM₁₀ NAAQS into the future despite these changes. The control strategy which is being approved with this action is explained here. As explained previously, Colorado Regulation No. 4, "New Wood Stoves and the use of Certain Woodburning Appliances During High Pollution Days," along with local woodburning ordinances was approved with the PM₁₀ SIP. There are no changes being made to this control program with this action. There are also no changes approved with this action for Regulation No. 11, the Automobile Inspection and Readjustment Program. Changes to this regulation were approved in a **Federal Register** action on December 14, 2001 (66 FR 64751) as part of the carbon monoxide maintenance plan. No further changes to this program were made for the PM₁₀ maintenance plan.

As with the PM₁₀ attainment SIP, part of the PM₁₀ control strategy in the maintenance plan relies on the Federal Motor Vehicle Control Program (FMVCP). In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Denver. The control program that Colorado uses in the PM₁₀ maintenance plan includes emission reduction credits from our Tier II motor vehicle emissions standards and sulfur in gasoline. The new vehicle emission standards lower the average emission standards to 0.07 grams per mile of NO_x and begin in 2004 with a 3 year phase in period. The sulfur in gasoline standards require reductions from 300 parts per million to 30 parts per million of sulfur and begin in 2004 with a 3 year phase in period for Colorado and other Western states (most areas around the country are under a 2 year phase in requirement). When these new requirements are fully implemented (this will be 2030 due to fleet turnover), they will reduce NO_x emissions nationally by 74% or 2 million tons per

year by 2020 and 3 million tons per year by 2030.

The maintenance plan includes a revised version of Colorado's Regulation No. 16, "Street Sanding Emissions." The changes to this regulation were adopted by the Colorado Air Quality Control Commission with the PM₁₀ maintenance plan on April 19, 2001. In addition to the existing portions of Regulation No. 16, these revisions require additional emission reductions in the Denver area. These reductions are: 30% emission reductions region-wide, excluding the Foothills Area which is subject to 20% emission reductions (the Foothills Area is specifically defined in Colorado Regulation No. 16), 50% emission reductions in the central Denver area (bounded by 38th Avenue, Federal Boulevard, Louisiana Avenue, and Downing Street), 54% reductions on I-25 between University and 6th Avenue; and 72% emission reductions in the central business district (bounded by Colfax Avenue, Broadway, 20th Street, Wynkoop and Speer Boulevard). The maintenance plan commits to implement these new requirements during the winter 2001/2002 season. It should be noted that a portion of these additional reductions in street sanding, de-icing and sweeping reflect a study contracted by the Denver Regional Air Quality Council (RAQC) that found increased benefits from de-icing and sweeping beyond what has historically been assumed for the Denver area (previous assumptions for Denver were consistent with recommendations from EPA guidelines). Based on the recommendations of the "Emissions Benefit Study and Analysis," the RAQC decided to increase the emission reductions from street sweeping using mechanical or combination equipment to 37% and the percent emission reductions from vacuum and regenerative air equipment was increased to 61%. We have reviewed this study and found it to be technically accurate and therefore we also approve the resulting emission reduction credits assumed for these activities.

Colorado Regulation No. 1 "Particulates, Smokes, Carbon Monoxide, & Sulfur Oxides," will remain in the PM₁₀ maintenance plan, with a few important changes that will bring further emission reductions. The revisions to Regulation No. 1 affect Public Service Company of Colorado's Cherokee, Arapahoe and Valmont Electric Generating Stations as well as the restrictions on the use of fuel oil as a backup fuel. One revision requires a 0.88 pounds per million British Thermal Unit (lb/mmBTU) SO₂ limit for the Cherokee boiler units 1 and 4 and

Arapahoe boiler unit 4, based on a 30-day rolling average from November 1 to March 1 of each year. This limit is in addition to the existing 1.1 lb/mmBTU SO₂ limit with an additional 20% annual tonnage reduction that applies to Arapahoe boiler unit 4. Another revision to Regulation No. 1 is that the January 1, 2003 planned retirement of Arapahoe boiler units 1 and 2 is being made federally enforceable in order for those emission reductions to be used in the maintenance demonstration. In addition, a 30-day rolling average NO_x limit of 0.60 lb/mmBTU for Cherokee boiler unit 1 will be effective on January 1, 2005. These emission reduction credits are used accordingly in the maintenance demonstration for 2005 and beyond. Language was added to the specific sections for Cherokee, Arapahoe and Valmont to specify that the sources' continuous emissions monitoring equipment would be certified and operated in accordance with 40 CFR 60.13 for measuring opacity, SO₂, NO_x, and either O₂ or CO₂ on all the boiler units for these sources that are included in the regulation. Lastly, there is a revision to the fuel oil restrictions which ensures that these restrictions will continue to apply in the Denver PM₁₀ area after the area is redesignated to attainment.

We note here that any source modeled at its maximum emission potential (PTE) was not required to have short-term emission limits in the maintenance plan. These sources cannot emit more than the maximum PTE which was used in the maintenance plan's modeling analysis absent a physical modification, or a change in operational method, either of which would require a permit revision. Any such permitting action would require an analysis of potential impacts on the Denver PM₁₀ area. Please see Colorado's technical support documentation for more detailed information on each source.

In addition to these improved control measures which are being added to the PM₁₀ maintenance plan, there are also certain control measures which are being removed from the control strategy with this maintenance plan. This is acceptable under the Calcagni Memorandum as long as the area can still demonstrate maintenance of the PM₁₀ standard. Regulation No. 12, the "Diesel Inspection/Maintenance Program" will be removed from the PM₁₀ SIP with the final approval of this maintenance plan. This program only achieved small emission reductions and therefore, Colorado demonstrated maintenance of the standard without taking credit for the regulation. Regulation No. 12 will remain as a state-

only requirement. Likewise, Regulation No. 13 "Oxygenated Fuels Program" will also be removed from the PM₁₀ SIP with the approval of this plan due to its minor emission reductions for PM₁₀. This regulation is a part of the carbon monoxide maintenance plan, which we approved on December 14, 2001 (66 FR 64751).

As explained previously, the control strategy for the PM₁₀ SIP included permits for seven stationary sources through our incorporation of these permits in the final approval of the SIP. These permits will be removed from the SIP with our final approval of this maintenance plan. We have evaluated this action and decided that the integrity of the control strategy will be preserved for the following reasons. All major emissions from Public Service Company's Cherokee Electric Generating Station, Trigen-Colorado Energy Corporation, Rocky Mountain Bottle Company and the Conoco Refinery are covered either by existing or new provisions in Regulation No. 1. As noted previously, Conoco will be subject to NSPS Subpart J limits on FCCU PM emissions once the federal consent decree is final. In addition, some of the sources, such as the Ultramar Diamond Shamrock refinery, were modeled at PTE, demonstrating that even at the sources' maximum emission rates, the Denver area would still maintain the PM₁₀ standard. The permits for Purina Mills and Electron Corporation were included in the PM₁₀ SIP because these sources had opted for synthetic minor permits during the development of the SIP. This was part of an agreement we made with Colorado in order for the Denver area to show attainment of the PM₁₀ standard. Accordingly, Colorado modeled these sources at their actual emissions plus a growth factor for purposes of the nonattainment area SIP attainment demonstration. Although these sources have potentials to emit greater than 100 tons per year, they are no different than other synthetic minor sources in the Denver area that were modeled at actual emissions plus a growth factor in the original nonattainment area SIP, and there is no reason the permits for these sources need to be specifically incorporated by reference into the SIP. Thus, the maintenance plan removes the permits for Purina Mills and Electron Corporation from the SIP, and lists them as possible contingency measures should the NAAQS be violated.

Since no violations of the annual PM₁₀ NAAQS have ever occurred in Denver and since the maintenance demonstration clearly shows maintenance of the 24-hour PM₁₀

NAAQS in Denver through the year 2015, it is reasonable to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. Thus, EPA believes Colorado has adequately demonstrated that the Denver area will maintain the PM₁₀ NAAQS for at least the next thirteen years.

c. Monitoring Network

Once a nonattainment area has been redesignated to attainment, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Colorado will continue to operate a core network of PM₁₀ monitoring sites for the purposes of tracking PM₁₀ in the Denver area. We approve these sites annually, and any future change would require discussion with us. In its July 30, 2001 submittal, Colorado committed to continue to operate the PM₁₀ monitoring stations in Denver, in accordance with 40 CFR part 58.

d. Verification of Continued Attainment

Colorado's maintenance plan submittal must indicate how the State will track the progress of the maintenance plan. This is necessary due to the fact that the emissions projections made for the maintenance demonstration depend on assumptions of point and area source growth. In Chapter 4, section E of the maintenance plan, Colorado has committed to the continued operation of the ambient air monitoring network and to conduct an annual review of the network to verify that the system continues to meet EPA monitoring objectives and the area continues to attain the PM₁₀ NAAQS.

In Chapter 4, section F.2, Colorado commits to track and document changes in new and modified stationary source permits. Also, in Chapter 4, sections E and F.2, the State commits to track mobile source emissions that contribute to PM₁₀, through the ongoing regional transportation planning process that is done by DRCOG. Since revisions to Denver's transportation improvement programs are prepared every two years, and must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the maintenance plan. This regional transportation process is conducted by DRCOG in coordination with the Denver Regional Air Quality

Council (RAQC), the State's Air Pollution Control Division (APCD), the Air Quality Control Commission (AQCC), and EPA. If any significant changes appear, Colorado will perform studies to determine whether additional or re-sited monitors are necessary and whether the emission projections for future years are on target. If the future year projections appear to be lower than actual growth, Colorado will address the situation accordingly.

e. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The plan should discuss the measures to be adopted and a schedule and procedure for adoption and implementation. The contingency plan must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation. The State should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

As stated in Chapter 4, section F of the maintenance plan, the contingency measures for the Denver area will be triggered by a violation of the PM₁₀ NAAQS. (However, the maintenance plan does note that an exceedance of the PM₁₀ NAAQS may initiate a voluntary, local process by the RAQC and APCD to identify and evaluate potential contingency measures.)

The RAQC, in coordination with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the PM₁₀ NAAQS has occurred. The subcommittee will present recommendations to the RAQC within 120 days of notification and the RAQC will present recommended contingency measures to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the RAQC, along with any other contingency measures that the AQCC believes may be appropriate to

effectively address the violation of the PM₁₀ NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in Chapter 4, section F of the Denver PM₁₀ maintenance plan include the control measures from the Part D nonattainment plan that are being removed with this maintenance plan as well as additional potential measures. The potential contingency measures which are the result of relaxations to the nonattainment plan control measures are: (1) The repeal of certain sections of Regulation No. 11 "Motor Vehicle Emissions Inspection Program," (2) Regulation No. 12, "Diesel Inspection/Maintenance Program," (3) Regulation No. 13 "Oxygenated Fuels Program," and (4) the stationary source permits that were incorporated into the Denver PM₁₀ nonattainment SIP. The contingency plan also includes other potential contingency measures that would bring additional reductions in particulates to the Denver area. These measures are: (1) Increased street sweeping requirements, (2) expanded, mandatory use of alternative de-icers, (3) more stringent street sand specifications, (4) road paving requirements, (5) further woodburning restrictions, (6) re-establishing nonattainment area new source review permitting requirements for stationary sources, (7) NO_x RACT for stationary sources, (8) transportation control measures designed to reduce vehicle miles traveled, (9) an improved diesel inspection/maintenance program, (10) a retrofit program for heavy-duty diesel truck engines, and (11) other emission control measures appropriate for the area based on the consideration of cost-effectiveness, PM₁₀ emission reduction potential, economic and social considerations, or other factors that the State deems appropriate. A more complete description of the triggering mechanism and these contingency measures can be found in Chapter 4, section F of the maintenance plan.

Based on the above, we find that the contingency measures provided in the Denver PM₁₀ maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

f. Subsequent Maintenance Plan Revisions

As mentioned above, this maintenance plan uses credits from the EPA Tier II standards beginning in 2004, but this is based on adjustments made to the MOBILE5 model and not the new MOBILE6 emissions model since the latter had not been officially released

when the maintenance plan was developed. Due to the fact that the Tier II assumptions using MOBILE5 may not be as accurate as they would be if MOBILE6 were used, Colorado has committed to revise the maintenance plan within one year of the later of the official release of: (1) MOBILE6, (2) the MOBILE6 particulate emissions replacement for PART5, or (3) the MOBILE6 guidance to enable Colorado to model its vehicle inspection/maintenance program for the model years after 1995.

In accordance with section 175A(b) of the Act, Colorado is required to submit a revision to the maintenance plan eight years after the redesignation of the Denver area to attainment for PM₁₀. This revision is to provide for maintenance of the NAAQS for an additional ten years following the first ten year period. In the Denver redesignation request, Colorado committed to submit a revised maintenance plan eight years after the approval of the redesignation request and maintenance plan.

v. Meeting Applicable Requirements of Section 110 and Part D of the Act

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the Act. We interpret this to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

a. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Colorado SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. These requirements were met with the Colorado's March 30, 1995, November 17, 1995, and December 22, 1995 submittals for the Denver PM₁₀ nonattainment area. We approved these submittals on September 23, 1996 (61 FR 49682) and April 17, 1997 (62 FR 18716).

b. Part D Requirements

Before a PM₁₀ nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements

applicable to all nonattainment areas, while subpart 4 of part D establishes specific requirements applicable to PM₁₀ nonattainment areas. The General Preamble (see 57 FR 13530, *et seq.*) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), 172(c)(7) (the section 110(a)(2) air quality monitoring requirements), and 172(c)(9) (contingency measures). It is also worth noting that we interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP) and 172(c)(6) (other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment", and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM₁₀ NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory, have been satisfied through our September 23, 1996 (61 FR 49682) and April 17, 1997 (62 FR 18716) approvals of the Denver PM₁₀ SIP and the demonstration that the area is now attaining the NAAQS.

Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

We approved the requirements of the part D new source review permit program for Colorado on August 18, 1994 (59 FR 42506). Once the Denver area is redesignated to attainment, the prevention of significant deterioration (PSD) requirements of part C of the Act will apply. We must ensure that the State has made any needed modifications to its PSD regulations so

that Colorado's PSD regulations will apply in the Denver area after redesignation. Colorado's PSD regulations, which we approved as meeting all applicable Federal requirements (59 FR 42500, August 18, 1994), apply to any area designated as unclassifiable or attainment and, thus, will become fully effective in the Denver area upon redesignation of the area to attainment.

C. Have the Transportation Conformity Requirements Been Met?

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–62196) and in the sections of the rule referenced above.

According to 40 CFR 93.118(b)(2), when a maintenance plan has been submitted, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and if an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

In the Denver PM₁₀ nonattainment plan, Colorado had previously adopted

a mobile source emissions budget for PM₁₀ for the years 1998–2005 of 54 tons/day and an emissions budget for 2006 and beyond of 60 tons/day. A 119.4 tons/day NO_x emissions budget was established for analysis years 1998 and beyond. In the Denver PM₁₀ maintenance plan, Colorado indicated that it would adopt a new mobile source emissions budget of 51 tons/day for PM₁₀ and a 101 tons/day NO_x emissions budget for the years 2015 and beyond. Because future year projections in the maintenance plan were below the PM₁₀ standard of 150 µg/m³, under 40 CFR 93.124, Colorado was allowed to allocate the “safety margin” (the difference between the 24-hour PM₁₀ standard and the concentration projected for the maintenance year 2015), to the NO_x emissions budget. This safety margin is 1.1 µg/m³ and equates to 13 tons/day of NO_x. Therefore, the 101 tons/day NO_x emissions budget includes this “safety margin” of 13 tons/day. EPA's approval of the emissions budgets means that emissions projections (in a conformity analysis) for years 2015 and beyond must be less than or equal to 51 tons/day PM₁₀ and 101 tons/day NO_x.

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund vs. the Environmental Protection Agency*, No. 97–1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in SIPs are adequate before they are used to determine the conformity of Transportation Improvement Programs or Long Range Transportation Plans. In response to the court decision, we are making most submitted SIP revisions containing a control strategy plan available for public comment and responding to these comments before announcing our adequacy determination. (We do not perform adequacy determinations for SIP revisions that only create new emission budgets for years in which an EPA-approved SIP already establishes a budget, because these new budgets cannot be used for conformity until they are approved by EPA.) We make SIP revisions available for comment by posting notification of their availability on our web site (currently, these notifications are posted at www.epa.gov/oms/transp/conform/adequacy.htm). The adequacy process is discussed in greater detail in a May 14, 1999 memorandum from Gay MacGregor entitled “Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,” also

available on our web site (www.epa.gov/oms/transp/traqconf.htm).

EPA reviewed the Denver PM₁₀ budgets for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. Notice of the availability of this SIP was posted on our adequacy web site on August 12, 2001, and a 30-day comment period for adequacy was provided following the procedures described in the May 14, 1999 Gay MacGregor memorandum referenced above. No comments were received. EPA's adequacy determination was made in a letter to the Colorado APCD on September 20, 2001, and was announced in the **Federal Register** on October 12, 2001 (66 FR 52129). As a result of this adequacy finding, the emissions budgets took effect for conformity determinations in the Denver metro area on October 29, 2001. However, we are not bound by that determination in acting on the maintenance plan.

D. Did Colorado Follow the Proper Procedures for Adopting This Action?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The Act also requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565, April 16, 1992). Our completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. We attempt to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) of the Act if a completeness determination is not made within six months after receipt of the submission.

Copies of the proposed changes were made available to the public and the AQCC held a public hearing on April 19, 2001 to entertain public comment on the redesignation request and maintenance plan for the Denver PM₁₀ nonattainment area. Colorado did not receive any adverse comments and

therefore, the redesignation request and maintenance plan were subsequently adopted by the AQCC on April 19, 2001. The request was formally submitted to us for approval with a Governor's letter dated July 30, 2001. Supplementary documentation necessary for our completeness determination was submitted on September 5, 2001, September 10, 2001 and September 13, 2001. We reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that Colorado's submittal was administratively and technically complete under section 110(a)(2) of the CAA. Thus, pursuant to section 110(k)(1)(B) of the Act, the submittal was deemed administratively and technically complete with a September 24, 2001 letter from Jack McGraw, Acting Regional Administrator to Governor Bill Owens. Additional documentation was also submitted by Colorado on November 27, 2001. This information was necessary in order to complete our review of the maintenance plan and technical support information.

III. Background

To implement our 1987 revisions to the particulate matter NAAQS, on August 7, 1987 (52 FR 29383), we categorized areas of the nation into three groups based on the likelihood that protection of the PM₁₀ NAAQS would require revisions of the existing SIP. We identified the Denver area as a PM₁₀ "Group I" area of concern, i.e., an area with a strong likelihood of violating the PM₁₀ NAAQS and requiring a substantial SIP revision. The Denver area was among several Group I PM₁₀ areas, all of which were designated and classified as moderate PM₁₀ nonattainment areas by operation of law upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). See 56 FR 56694 at 56705–56706 (November 6, 1991).

By November 15, 1991, States containing initial moderate PM₁₀ nonattainment areas were required to submit most elements of their PM₁₀ SIPs. (See sections 172(c), 188, and 189 of the Act.) Some provisions, such as PM₁₀ contingency measures required by section 172(c)(9) of the Act and nonattainment new source review (NSR) provisions, were due at later dates. In order for a nonattainment area to be redesignated to attainment, the above mentioned conditions in section 107(d)(3)(E) of the Act must be met. We approved the PM₁₀ contingency measures for the area on September 23, 1996 (61 FR 49682). We approved the PM₁₀ SIP for Denver on April 17, 1997 (62 FR 18716) as meeting those

moderate PM₁₀ nonattainment plan requirements that were due to EPA on November 15, 1991. The PM₁₀ SIP's transportation budgets required under the transportation conformity rule were approved on March 31, 1998 (63 FR 15294).

On July 30, 2001, the Governor of Colorado submitted a request to redesignate the Denver moderate PM₁₀ nonattainment area to attainment for the 1987 PM₁₀ NAAQS along with a maintenance plan for the area. On July 18, 1997, we promulgated new NAAQS for PM₁₀ and PM_{2.5}. However, on May 18, 1999, the United States Court of Appeals for the D.C. Circuit in *American Trucking Associations, Inc. et al., v. United States Environmental Protection Agency* vacated the 1997 PM₁₀ standard. Because of the Court ruling, we are continuing to implement the pre-existing PM₁₀ standard, and are therefore approving redesignations to qualified PM₁₀ nonattainment areas.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104–4).

This proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: May 14, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–12965 Filed 5–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[Docket#: AK-02-003; FRL-7216-7]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for Fairbanks Carbon Monoxide Nonattainment Area, Alaska**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.**SUMMARY:** EPA is proposing to find that the Fairbanks nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) as of December 31, 2001.**DATES:** Written comments must be received on or before June 24, 2002.**ADDRESSES:** Written comments should be mailed to Connie Robinson, Office of Air Quality, Mail code OAQ-107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address.**FOR FURTHER INFORMATION CONTACT:** Connie Robinson, Office of Air Quality, Mail Code OAQ-107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1086.**SUPPLEMENTARY INFORMATION:** Throughout this document, the words "we," "us," or "our" means the EPA.**Table of Contents**

- I. Background
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- II. EPA's Proposed Action
- III. Basis for EPA's Action
- IV. Request for Public Comments
- V. Administrative Requirements

I. Background**A. Designation and Classification of CO Nonattainment Areas**

The Clean Air Act Amendments (CAAA) of 1990 authorized EPA to designate areas across the country as nonattainment, and to classify these areas according to the severity of the air pollution problem. Pursuant to section 107(d) of the CAAA, following enactment on November 15, 1990, States were requested to submit lists, within 120 days, which designated all areas of the country as either attainment, nonattainment, or unclassifiable for CO.

The EPA was required to promulgate these lists of areas no later than 240 days following enactment of the CAAA (See 56 FR 56694, (November 6, 1991)).

On enactment of the CAAA, a new classification structure was created for CO nonattainment areas, pursuant to section 186 of the CAAA, which included both a moderate and a serious area classification. Under this classification structure, moderate areas with a design value of 9.1-16.4 ppm, were expected to attain the CO NAAQS as expeditiously as practicable, but no later than December 31, 1995. CO nonattainment areas designated as serious, with a design value of 16.5 ppm and above, were expected to attain the CO NAAQS as expeditiously as practicable, but no later than December 31, 2000. Fairbanks did not have the two years of clean data required to attain the standard by December 31, 2000, the required attainment date for CO serious areas, and under section 186(a)(4) of the CAAA. Alaska requested and EPA granted a one year extension of the attainment date deadline to December 31, 2001 (See 66 FR 28836, (May 25, 2001)).

States containing areas classified as either moderate or serious for CO had the responsibility of developing and submitting to EPA State Implementation Plans (SIPs) which addressed the nonattainment air quality problems in those areas. The EPA issued general guidance concerning the requirements for SIP submittals, which included requirements for CO nonattainment area SIPs, pursuant to Title I of the CAAA (See generally, 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)). The air quality planning requirements for moderate and serious CO nonattainment areas are addressed in sections 186-187 respectively of the CAAA, which pertain to the classification of CO nonattainment areas as well as to the requirements for the submittal of both moderate and serious area SIPs.

The EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date.¹ In this case the EPA is required to make determinations concerning whether serious CO nonattainment areas attained the NAAQS by their attainment date. Pursuant to the CAAA, the EPA is required to make an attainment determination for this area by June 30, 2002, no later than 6 months following the attainment date for the area. Therefore, this action is being taken to

¹ See sections 172(C), 179(c) and 186(b)(2) of the CAAA.

make a determination of attainment for a serious CO nonattainment area with a December 31, 2001 attainment date.

B. How Does EPA Make Attainment Determinations?

Section 179(c)(1) of the CAAA provides that attainment determinations are to be based upon an area's "air quality as of the attainment date," and section 186(b)(2) is consistent with this requirement. EPA will make the determination as to whether an area's air quality is meeting the CO NAAQS based upon air quality data gathered at CO monitoring sites in the nonattainment area which have been entered into the Aerometric Information Retrieval System (AIRS). This data is reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990.

The 8-hour CO design value is used to determine attainment of CO areas, and is computed by first finding the maximum and second maximum (non-overlapping) 8-hour values at a monitoring site for the most recent 2 years of air quality data. Then the maximum value of the second high values is used as the design value for the monitoring site. The CO NAAQS requires that not more than one 8-hour average per year can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances). CO attainment is evaluated and determined by reviewing 8 quarters of data, or a total of 2 complete calendar years of data for an area. If an area has a design value that is greater than 9.0 ppm, this means that a monitoring site in the area, where the second highest (non-overlapping) 8-hour average was measured, was greater than 9.0 ppm in at least 1 of the 2 years being reviewed to determine attainment for the area. Then this indicates that there were at least two values which measured above the NAAQS for CO. Thus, the standard was not met in the area.

C. What Is the Attainment Date for the Fairbanks CO Nonattainment Area?

As stated above, the Fairbanks CO nonattainment area was designated nonattainment for CO by operation of law upon enactment of the CAAA of 1990. Under 186(a) of the CAAA, each CO area designated nonattainment was also classified by operation of law as

either “moderate” or “serious” depending on the severity of the area’s air quality problem. States containing areas that were classified as moderate nonattainment were required to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. On March 30, 1998, EPA made a finding that Fairbanks did not attain the CO NAAQS by the December 31, 1995 attainment date for the moderate nonattainment area. This finding was based on EPA’s review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding the Fairbanks CO nonattainment area was reclassified as a serious CO nonattainment area by operation of law [See 63 FR 9945, (February 27, 1998)]. Fairbanks did not have the two years of clean data required to attain the standard by December 31, 2000, the required attainment date for CO serious areas, and under section 186(a)(4) of the CAAA, Alaska requested and EPA granted a one year extension of the attainment date deadline to December 31, 2001.

II. EPA’s Proposed Action

EPA is, by today’s action, making the determination that the Fairbanks serious CO nonattainment area did attain the CO NAAQS by the attainment date of December 31, 2001. As explained below, the Fairbanks nonattainment area remains classified a serious CO nonattainment area, and today’s action does not redesignate the Fairbanks nonattainment area to attainment.

III. Basis for EPA’s Action

Alaska has three CO monitoring sites in the Fairbanks CO nonattainment area. The air quality data in AIRS for these monitors show that, for the 2-year period from 2000 through 2001, there were no violations of the annual CO standard. The second highest 8-hour average measured during this 2-year period was at the Second and Cushman monitoring site in 2000 when the site measured 8.9 ppm. Based on this information, EPA has determined that the area attained the CO NAAQS standard as of the attainment date of December 31, 2001.

In summary, EPA proposes to find that the Fairbanks CO nonattainment area attained the CO NAAQS as of the attainment date of December 31, 2001. If we finalize this proposal, consistent with CAAA section 188, the area will remain a serious CO nonattainment area with the additional planning requirements that apply to serious CO nonattainment areas. This proposed finding of attainment should not be confused with a redesignation to

attainment under CAAA section 107(d). Alaska has not submitted a maintenance plan as required under section 175A(a) of the CAAA or met the other CAAA requirements for redesignation to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Fairbanks CO nonattainment area until such time as EPA finds that Alaska has met the CAAA requirements for redesignations to attainment.

IV. Request for Public Comments

We are soliciting public comments on EPA’s proposal to find that the Fairbanks CO nonattainment area has attained the CO NAAQS as of the December 31, 2001, attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 14, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–12966 Filed 5–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247–0325b; FRL–7201–7]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent usage and graphic arts operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 24, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765-4182; and, Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD 442—Usage of Solvents and VCAPCD 74.19—Graphics Arts. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments on the direct final rule, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of the direct final rule and if that provision may be severed from the remainder of the direct final rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this

time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final rule.

Dated: April 15, 2002.

Keith A. Takata,

Associate Regional Administrator, Region IX.

[FR Doc. 02-12840 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA183-4192b; FRL-7211-9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Bethlehem Steel Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for Bethlehem Steel Corporation. Bethlehem Steel Corporation is a major source of volatile organic compounds (VOC) and nitrogen oxides (NO_x) located in Dauphin County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 24, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this

action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814-2182 or Betty Harris at (215) 814-2168, the EPA Region III address above or by e-mail at quinto.rose@epa.gov or harris.betty@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of the Commonwealth's source-specific RACT requirements to control VOC and NO_x from Bethlehem Steel Corporation, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 8, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02-12838 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-1099, MB Docket No. 02-104, RM-10390]

Digital Television Broadcast Service; Dawson, Pelham, Savannah, Waycross, & Wrens, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Georgia Public Telecommunications Commission, licensee of stations WCES-TV, WVAN-TV, WXGA-TV, WACS-TV, and WABW-TV, requesting the substitution of DTV channel *2 for DTV channel *36 at Wrens; DTV channel *13 for DTV channel *46 at Savannah; DTV channel *9 for DTV channel *18 at Waycross; DTV channel *8 for DTV channel *26c at Dawson; and DTV channel *5 for DTV channel DTV *20 at Pelham. DTV channels *2, *13, *9, *8 and *5 can be allotted to

Wrens, Savannah, Waycross, Dawson, and Pelham, Georgia, in compliance with the principle community coverage requirements of Section 73.625(a). DTV Channel *2 can be allotted with a power of 4.9, (HAAT) of 436 meters; DTV channel *13 with a power of 10, (HAAT) of 293; DTV channel *9 with a power of 4.6 and (HAAT) of 286 meters; DTV channel *8 with a power of 4.9 and (HAAT) of 331 meters; and DTV channel *5 with a power of 0.75 and (HAAT) of 474 meters.

DATES: Comments must be filed on or before July 8, 2002, and reply comments on or before July 23, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald T. Stepka, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004-1206 (Counsel for Georgia Public Telecommunications Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-104, adopted May 10, 2002, and

released May 17, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *26c and adding DTV Channel *8c at Dawson.

3. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *20 and adding DTV Channel *5 at Pelham.

4. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *46 and adding DTV Channel *13 at Savannah..

5. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel *18 and adding DTV Channel *9 at Waycross.

6. Section 73.622(b), the Table of Digital Television Allotments under

Georgia, is amended by removing DTV Channel *36 and adding DTV Channel *2 at Wrens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-13028 Filed 5-22-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, and 177

[Docket No. RSPA-02-12064 (HM-232)]

RIN 2137-AD66

Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Correction and Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction and extension of comment period.

SUMMARY: On May 2, 2002, the Research and Special Programs Administration proposed new requirements to enhance the security of hazardous materials transported in commerce. In response to requests by members of the regulated community, the comment period for the proposed rule is extended until July 3, 2002. In addition, we are correcting a citation in the proposed regulatory text.

DATES: Submit comments by July 3, 2002. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments should identify Docket Number RSPA-02-12064 (HM-232) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at "<http://dms.dot.gov/>" and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there

between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "<http://dms.dot.gov/>."

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 2002, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) proposing regulations to enhance the security of hazardous materials shipments (67 FR 22028). The NPRM proposed to revise requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to registration certificates, shipping documentation, and training. We also proposed to establish a new requirement for certain hazardous materials shippers and carriers to have plans in place to assure the security of shipments during transportation. We provided for a 30-day comment period, until June 3, 2002.

Since publication of the NPRM, we received 9 requests from representatives of the regulated industry requesting an extension of the 30-day comment period provided in the NPRM. Commenters suggest that the issues addressed in the NPRM require "significant" and "rigorous" analysis and substantial industry outreach to accurately assess the impact of the proposals on the industry. Commenters request a 60-day extension of the comment period to thoroughly review the proposals and provide constructive input to the rulemaking process.

As we stated in the NPRM, the threat to this Nation's security posed by possible intentional misuse of hazardous materials transported in commerce is ongoing and significant. Hazardous materials shippers and carriers must take action to enhance hazardous materials transportation security. However, we agree that commenters need more time than initially provided to consider the proposals in the NPRM. Therefore, we are extending the comment period for the NPRM an additional 30 days, until July 3, 2002.

In addition, two commenters discovered an incorrect reference in the NPRM. On page 22034, under the proposed regulatory text language for § 172.704(a)(4)(ii), the reference

"§ 173.14 of this subchapter" should read "§ 172.802".

Accordingly, we are correcting the HM-232 NPRM as follows:

Correction

PART 172—[CORRECTED]

§ 172.704 [Corrected]

In proposed rule FR Doc. 02-10405, beginning on page 22028 in the issue of May 2, 2002, make the following correction to the proposed regulatory text:

On page 22034, in the third line of the second paragraph of column 3, in § 172.704(a)(4)(ii), correct "§ 173.14 of this subchapter" to read "§ 172.802".

Issued in Washington, DC on May 20, 2002 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration.

[FR Doc. 02-13003 Filed 5-22-02; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010710173-2088-04; I.D. 032102A]

RIN 0648-AO91

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries Fishing Year 2002

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

ACTION: Proposed rule; request for comments; proposed technical correction.

SUMMARY: NMFS proposes recreational measures for the 2002 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Public comments must be received on or before June 7, 2002.

ADDRESSES: Comments on the proposed recreational specifications should be

sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298.

Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nero.html>.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) and its implementing regulations (50 CFR part 648, subparts G, H, and I) describe the process for specifying annual recreational measures that apply in the Federal Exclusive Economic Zone (EEZ). The states manage these fisheries within three miles of their coast, under the Commission's Interstate FMP. The Federal regulations govern vessels fishing in the EEZ, which extends beyond three miles, as well as vessels possessing a Federal fisheries permit, regardless of where they fish. The FMP established Monitoring Committees (Committees) for each of the three fisheries, consisting of representatives from the Atlantic States Marine Fisheries Commission (Commission), the Mid-Atlantic Fishery Management Council (Council), the New England and South Atlantic Fishery Management Councils, and NMFS.

The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries. The FMP limits these measures to minimum fish size, possession limit, and closed seasons.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP.

Final specifications for the 2002 summer flounder, scup and black sea bass fisheries were published at 66 FR 66348, December 26, 2001. These specifications include a coastwide recreational harvest limit of 9.72 million lb (4.40 million kg) for summer flounder, 2.71 million lb (1.23 million kg) for scup, and 3.43 million lb (1.55 million kg) for black sea bass. Those specifications do not establish recreational measures, since final recreational catch data were not available when the Council made its recreational harvest limit recommendation to NMFS.

Summer Flounder

The 2002 final specifications established Total Allowable Landings (TAL) for summer flounder of 24.3 million lb (11.02 million kg), consistent with the FMP's target fishing mortality rate (F) of 0.26. The specifications divided the summer flounder TAL into a commercial quota of 14.58 million lb (6.61 million kg) and a recreational harvest limit of 9.72 million lb (4.40 million kg).

In 2000, recreational landings were 15.82 million lb (7.17 million kg), the highest landings since 1987. In 2001, the Council and the Board implemented a recreational harvest limit of 7.16 million lb (3.25 million kg), the lowest recreational limit since the FMP went into effect in 1992. To achieve the 2001 recreational harvest limit, most coastal states from Maine through North Carolina established measures in state waters that were significantly more restrictive than the 2000 recreational summer flounder measures. NMFS similarly implemented restrictive measures for the EEZ (66 FR 39288, July 30, 2001). Despite these measures, 2001 Marine Recreational Statistics Survey (MRFSS) data project recreational summer flounder landings to be 11.54 million lb (5.23 million kg). Thus,

assuming recreational fishing effort in 2002 will be similar to that in 2001, a 16 percent reduction in recreational landings is needed to achieve the recreational harvest limit of 9.72 million lb (4.40 million kg) established for 2002. However, in 2001, some states implemented higher minimum size limits and possession limits than the proposed limits in 2002. In addition, most states implemented differing seasons. Taking into consideration state-specific measures implemented in 2001, adjusted projected landings would be 13.22 million lb (5.99 million kg). As such, the overall percent reduction required to achieve the 2002 harvest limit of 9.72 million lb (4.41 million kg) would be 27 percent for 2002.

On July 11, 2001, NMFS published a final rule in the **Federal Register** to implement Framework Adjustment 2 to the FMP (66 FR 36208). This framework implemented a process that makes conservation equivalency a management option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limit, minimum fish size, and season time and duration) as long as the combined effect of all of the states' management measures achieve the same level of conservation as Federal coastwide measures developed to achieve the recreational harvest limit would, if implemented by all of the states (i.e., both would have equivalent Fs).

If NMFS approves and implements conservation equivalency, then NMFS would waive Federal recreational measures that would otherwise apply in the EEZ. Federally permitted vessels as well as vessels fishing in the EEZ, would be subject to the recreational fishing measures implemented by the state in which the fish are landed. The Council and Board recommend annually either conservation equivalency (whereby states develop state-specific measures) or coastwide management measures (whereby all states adopt the same measures as the Federal measures) for the summer flounder recreational fishery to ensure that the recreational harvest limit will not be exceeded.

If the Council and the Board recommend conservation equivalency, they must also recommend coastwide management measures that would be implemented if, following NMFS review and public comment, conservation equivalency is not implemented in the final rule. In addition, the Council and the Board must recommend precautionary default measures that would apply in states that either do not

submit conservation equivalency proposals to the Board, or whose management proposals are not approved by the Board. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

For 2002, the Council and Board voted to recommend conservation equivalency to achieve the required 16-percent reduction in total landings for the recreational summer flounder fishery.

As required when conservation equivalency is recommended, the Council and Board also specify precautionary default measures. Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The Precautionary Approach Alternative adopted by the Council and Board consists of an 18 inch (45.72 cm) total length (TL) minimum fish size, a possession limit of one fish per person, and no closed season. Because the precautionary default must be restrictive enough to achieve the necessary reductions in the state requiring the greatest reductions, in most states application of the precautionary default would achieve higher than necessary reductions. The precautionary default measures would reduce state specific landings by 41 (Delaware) to 88.2 percent (North Carolina). As specified in Framework 2 to the Summer Flounder, Scup and Black Sea Bass FMP, specific states that fail to implement conservation equivalent measures would be required to implement precautionary default measures.

Finally, the coastwide alternative recommended by the Council and Board to be implemented in the EEZ if conservation equivalency is not implemented, includes a possession limit of eight fish/person, a minimum fish size of 17 inches (43.18 cm) TL, and no closed season. The recommended coastwide alternative would reduce recreational landings by 30 percent, assuming the coastwide regulations are implemented by all states. For comparative purposes, the existing coastwide summer flounder measures include a 15.5-inch (39.37 cm) minimum fish size, a 3-fish possession limit and an open season from May 25 through September 4.

The Commission has established conservation equivalency guidelines that require each state, using state-specific tables, to determine and implement an appropriate possession limit, size limit, and closed season to achieve the landings reduction

necessary for each state. The state-specific tables are adjusted to account for the past effectiveness of the regulations in each state. As specified by the guidelines adopted by the Atlantic States Marine Fisheries Commission (ASMFC) and put forth in Addendum III to the Summer Flounder, Scup, and Black Sea Bass FMP, based upon the number of fish landed in 1998 (the control year) and projected to have been landed in 2001, the percent reduction in landings required by the states for 2002 (relative to 2001) are: Rhode Island: 5 percent; New Jersey: 16.7 percent; Delaware: 3.5 percent; Maryland: 5.3 percent; Virginia: 43.8 percent; and North Carolina: 28.4 percent. Massachusetts, Connecticut and New York do not require any reductions in recreational summer flounder landings if their current regulations are maintained.

1998 landings data were used to establish baseline state-by-state share ratios because this was the last year that all states had the same management regulations in place. Then, 2000 and 2001 landings data were used to set the landings reduction requirements for the 2002 recreational fishing year. Based on these data, it was concluded that 2001 landings were higher than the target for 2002, thus the 2002 quota is a reduction over 2001.

The Board required each state to submit its conservation equivalency proposal to the Commission by January 15, 2002. The Commission's Summer Flounder Technical Committee has since evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. After the Technical Committee evaluation, the Board met on February 21, 2002 to approve or disapprove each state's proposal. The Commission invited public participation in its review process by holding public meetings and offering the public the opportunity to comment on the state proposals. During the comment period, the Commission will notify NMFS as to which state proposals have been approved or disapproved. Although the public is not formally advised of the Commission's recommendation regarding conservation equivalency during the comment period on this proposed rule, the information is available from the Commission or NMFS, after such notification.

If, at the final rule stage, the Commission recommends and NMFS accepts conservation equivalency, then NMFS would waive the Federal recreational measures that would otherwise apply in the EEZ. Federally

permitted vessels as well as vessels fishing in the EEZ, would be subject to the recreational fishing measures implemented by the state in which it lands. States that do not submit proposals or whose proposals were disapproved by the Commission would be required by the Commission to adopt the precautionary default measures. The Commission would allow states that had been assigned the precautionary default measures to resubmit revised management measures and ASMFC would notify NMFS of any resubmitted proposals that were approved after publication of the final rule implementing the recreational specifications. Afterwards, NMFS would publish a notice in the **Federal Register** to notify the public of any changes in the state's management measures.

NMFS is proposing to either approve and defer to the state conservation equivalency measures approved and recommended by the Commission or to implement the coastwide alternative in this proposed rule. If conservation equivalency is approved, the final rule would waive Federal recreational summer flounder measures (possession limit, size limit, and season) for federally permitted, charter/party permit holders and recreational vessels fishing for summer flounder in the Exclusive Economic Zone (EEZ). Those vessels would be required to abide by the requirements enacted by the state in which they land summer flounder.

Scup

The 2002 specifications for scup implemented a recreational harvest limit of 2.71 mlb (1.23 million kg), consistent with the FMP target exploitation rate for scup, of 21 percent for the 2002 fishing year. The 2001 MRFSS data projected 2001 recreational scup landings to be 4.97 million lb (2.25 million kg). Assuming the same level of fishing effort will exist in 2002, the MRFSS data indicate that a reduction in landings will be necessary.

However, the landings data alone were not used to determine the necessary reductions for 2002. The effectiveness of the measures was also investigated and the Commission and Council found that they were not 100 percent effective due to discrepancies in landings data, which did not comply with the management measures set by the regulations. For example, some fish were landed over or under the bag limit and possession limit. These data were removed from the analyses and the data were re-analyzed to obtain more accurate estimates of landings that fall within the required measures. Likewise,

any discrepancies that occurred as a result of landings obtained outside the closed season of the previous year were removed. As a result, the projected 2001 recreational landings increased to 6.37 million lb (2.89 million kg) and the estimated reduction in landings necessary for 2002 increased to 57.4 percent.

The Council voted to recommend the following measures: A 10-inch (25.40-cm) TL minimum fish size, a 50-fish per person possession limit, and open seasons from January 1 through February 28 and from July 1 through October 31. For comparative purposes, the current scup recreational measures in the EEZ are a 9-inch (22.86 cm) minimum fish size, a 50-fish possession limit and an open season from August 15 through October 31. It was estimated that the Council's recommended scup measures would reduce recreational landings by only 30 percent, although a 57.4-percent reduction is necessary. The Council believes, however, that their recommended measures would have more impact than the analysis of the MRFSS data indicates, based on industry comment at the December 2001 Council meeting.

The Commission postponed action on scup at its December meeting and advised its staff to prepare an addendum to its Interstate FMP for Scup that would include state-by-state conservation equivalency and other measures. On February 21, 2002, the Commission approved Addendum VII to the Commission's Interstate Scup FMP, which allows states from Massachusetts through New York to develop state-specific management measures. For New Jersey, which has limited recreational scup landings data, the Commission approved a 10-inch (25.40-cm) TL minimum size, a 50-fish possession limit, and an open season from July 1 through October 31.

Due to low scup landings in more southern states, the Commission approved the retention of existing recreational scup measures in Delaware, Maryland, Virginia, and North Carolina. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures under Addendum VII to the Commission's Interstate FMP, it is likely that state and Federal recreational scup measures will differ for the 2002 season.

Disapproval of Council's Preferred Scup Alternative and Request for Public Comment

After careful review, NMFS has decided to disapprove the Council's scup recommendation (i.e Council's

Preferred Scup Alternative) because the analysis indicates that accepting this recommendation would result in landings of approximately 4.46 million lb (2.02 million kg), which is well above the scup recreational harvest limit of 2.71 million lb (1.23 million kg) established for 2002. Thus, the Council's recommended measures are not consistent with the requirements of the FMP.

The Council submission also analyzed the following three alternatives that could reduce recreational landings by the required 57.4 percent: (1) A 10-inch (25.4-cm) TL minimum fish size, a 20-fish per person possession limit, and open seasons from January 1 through February 28 and from July 1 through October 2; (2) a 9-inch (22.86-cm) TL minimum fish size, a 20-fish per person possession limit, and open seasons from January 1 through February 28 and from September 2 through October 31; and (3) a 9-inch (22.86-cm) TL minimum fish size, a 50-fish possession limit, and open seasons from January 1 through February 28 and from October 8 through October 31. NMFS is hereby requesting public comment on the first two of these alternatives (defined later in this document and referred to as NMFS Scup Alternatives 1 and 2) for possible implementation in the final rule. These two alternatives have been determined by the Council to achieve the landings reductions needed to achieve the FMP's target exploitation rate. The third alternative (Scup Alternative 3), which would allow only a 24-day open season during the prime fishing period, is not being further considered for implementation by NMFS. The impacts associated with NMFS Scup Alternatives 1 and 2 are described in the Council's submission and are summarized in the Classification section of this proposed rule.

NMFS is proposing NMFS Scup Alternative 2 for publication in the proposed regulatory text. However, depending upon public comment, NMFS may instead implement Scup Alternative 1. Should Scup Alternative 1 ultimately be chosen, NMFS will publish the corresponding regulations in the final rule.

Black Sea Bass

The 2002 specifications implemented a black sea bass recreational harvest limit of 3.43 mlb (1.56 million kg), consistent with the FMP's target exploitation rate of 37 percent established for the 2002 fishing year. The 2001 MRFSS data projected recreational scup landings during 2001 to be 3.64 million lb (1.65 million kg). As in the case of scup, landings data

were adjusted using the method devised by the Council's and Commission's Technical Committee to reflect the effectiveness of the various measures in 2001. Using this method, the projected 2001 recreational black sea bass landings increased to 3.88 million lb (1.76 million kg). Therefore, a 12-percent reduction in landings is estimated to be necessary for 2002.

The Council recommended the following black sea bass measures for the 2002 fishery: An 11.5-inch (29.21-cm) TL minimum fish size, a 25-fish per person possession limit, and no closed season. For comparative purposes, the current black sea bass regulations include an 11-inch (27.94 cm) minimum fish size, a 25-fish possession limit, and a March 1 through May 9 closed season. The Commission's Black Sea Bass Board adopted the same measures for 2002 as the Council at its December 2001 meeting. These measures should reduce recreational landings by 16 percent, if they are in compliance with the 85 percent criteria as adopted by the Black Sea Bass Monitoring Committee. NMFS has reviewed the Council's analyses of these measures and is publishing its preferred alternative in this proposed rule without modification.

Correction

This proposed rule contains a proposed technical correction. In a recent final rule (67 FR 6877, February 14, 2002), the existing introductory text to § 648.100 was inadvertently removed. This proposed rule contains the introductory text that was inadvertently removed.

Classification

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

The Council and NMFS prepared an IRFA that describes the economic impact this proposed rule would have on small entities, if adopted. A copy of the complete IRFA can be obtained from the Council (see ADDRESSES) or via the Internet at <http://www.nero.nmfs.gov>. A summary of the analysis follows.

This preamble includes a description of the proposed action, why it is being considered, and the legal basis for this proposed action. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternative or any of the alternatives considered for this action. A description of the action, why it is being considered, and the legal basis for this action are

contained in the preamble to this proposed rule.

The Council's IRFA examined the economic impacts of alternative sets of recreational management measures for the summer flounder, scup and black sea bass fisheries. The economic impacts are fully described in the EA/RIR/IRFA. The proposed action could affect any recreational angler who fishes for summer flounder, scup or black sea bass. However, this summary of the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass because these vessels can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or in state waters. Although other recreational fishers are likely to be impacted, they are not considered small entities nor is there a permit requirement to participate in these fisheries.

In the IRFA, NMFS estimated that the proposed measures could affect any of the 738 vessels possessing a Federal charter/party permit for summer flounder, scup and/or black sea bass in 2000, the most recent year for which complete permit data are available. Only 393 of these vessels reported actively participating in the recreational summer flounder, scup, and/or black sea bass fisheries in 2000.

The effects of the various management measures were analyzed by employing quantitative approaches to the extent possible. Where quantitative data were not available, the Council conducted qualitative analyses. Although Regulatory Flexibility Act guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead assessed using changes in party/charter vessel revenues as a proxy. This is because reliable cost data is not available for these fisheries. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process. The analysis estimated changes in revenues for party/charter vessels participating in the summer flounder, scup and/or black sea bass fisheries by employing the following method. First, 2001 MRFSS data were used to project the number of recreational party/charter vessel trips made in each state. The MRFSS data indicate that an estimated 1.778 million total trips were taken by anglers aboard

party/charter vessels in 2001 in the Northeast Region. Anglers fishing in New Jersey, North Carolina, Massachusetts, New York, and Virginia made 75 percent of those trips. The number of trips in each state ranged from a high of 621,700 in New Jersey to a low of 18,000 trips in Rhode Island.

Second, the number of trips that targeted summer flounder, scup and/or black sea bass was identified as appropriate for each measure. Then, the number of trips that would be impacted by the proposed measures was estimated. This information was presented as an absolute number and as a percentage of the total trips taken in each state.

Finally, the revenue impacts were estimated by calculating the average fee paid by anglers on party/charter vessels in the Northeast Region in 2001. That value of \$39.84 was used to calculate the statewide party/charter vessel revenue losses associated with the impacted trips (by multiplying the number of impacted trips in each state by \$39.84). Then, the revenue impacts on individual vessels were estimated by dividing the statewide revenue impact by the number of vessels affected in each state. This method presumes that the number of party/charter vessels participating in each fishery in 2002 will be the same as in 2000. Also, the analysis assumes that angler effort and catch rates in 2002 will be similar to 2001.

The analysis noted that this method is likely to result in an over-estimation of the revenue losses because the analysis assumes that all trips that are affected by the measures would not be taken in 2002. However, it is very likely that some anglers would continue to take party/charter vessel trips even if the restrictions limit their landings. Also, some may engage in catch and release fishing and others may target other species of fish. It was not possible to estimate the sensitivity of anglers to specific management measures. In addition, revenue impacts may be overestimated because the states may implement different measures in state waters.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 9.72 million lb (4.40 million kg) and reduce landings by at least 27 percent compared to 2001 by either deferring management to the states or imposing coastwide Federal measures throughout the EEZ. The precautionary default provision that is included in the conservation

equivalency proposal was not analyzed as a separate provision because it was assumed that, if conservation equivalency is approved in the final rule, the states would use this opportunity to tailor less restrictive measures specifically to their state fisheries.

Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The Precautionary Approach Alternative adopted by the Council and Board consists of an 18 inch (45.72 cm) total length minimum fish size, a possession limit of one fish per person, and no closed season. The precautionary default measures would reduce state specific landings by 41 (Delaware) to 88.2 percent (North Carolina). As specified by Framework 2 to the Summer Flounder, Scup and Black Sea Bass FMP, specific states that fail to implement conservation equivalent measures would be required to implement precautionary default measures.

The state-specific landings reductions associated with the precautionary default measures are substantially higher than the reductions that would be implemented using conservation equivalency. As such, it is expected that states will avoid the impacts of precautionary approach measures by establishing conservation equivalent management measures.

There is very little information available to empirically estimate how sensitive the affected party/charter boat anglers might be to the proposed fishing regulations. It is possible that the proposed management measures could restrict the recreational fishery for 2001 and cause a decrease in recreational satisfaction (i.e. low bag limit, larger fish size or closed season). It is also possible that, given the popularity of summer flounder among some anglers, the more restrictive time frame of the seasonal closures could affect angler satisfaction and/or demand for party/charter trips. Due to lack of data on angler satisfaction, these effects cannot be quantified. However, it is probable that the negative impacts to party/charter boat anglers under the precautionary default alternative would be substantially higher than those under the preferred alternative (conservation equivalency).

Comparatively, the impact of the proposed summer flounder conservation equivalency recommendation among states is likely to be similar to the level of landings reductions that are required of each state. Based upon the number of fish landed in 1998 and projected to

have been landed in 2001, the percent reduction in landings required by the states for 2002 (relative to 2001) are: Rhode Island: 5 percent; New Jersey: 16.7 percent; Delaware: 3.5 percent; Maryland: 5.3 percent; Virginia: 43.8 percent; and North Carolina: 28.4 percent. Massachusetts, Connecticut and New York do not require any reductions in recreational summer flounder landings if their current regulations are maintained. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP.

The impacts of the non-preferred summer flounder coastwide alternative, which proposes a 17-inch (43.2 cm) TL minimum fish size and a possession limit of eight fish/person, were assessed using the quantitative method described above. Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one summer flounder that was smaller than 17 inches (43.2 cm) TL or that landed more than eight summer flounder. NMFS concluded through the analysis that the measures would affect less than 1 percent of party/charter trips in any of the states, with impacts identified only in New Jersey (\$64,381), Virginia (\$20,199), Delaware (\$7,530), Rhode Island (\$1,872), and Maryland (\$558). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel was estimated to be \$1,506 in Delaware, \$961 in New Jersey, \$808 in Virginia, \$186 in Maryland, and \$67 in Rhode Island. For the reasons noted above (alternative species, catch and release fishing, etc), it is very likely that some anglers would continue to take party/charter vessel trips even if the restrictions limit their landings. Therefore, this method is likely to overestimate the potential revenue impacts of the proposed measures. In addition, only 12 percent of recreational summer flounder landings were derived from the EEZ in 2000. Federal coastwide measures would apply to federally permitted vessels wherever they fish. However, the states could potentially implement different recreational measures for summer flounder.

Impacts of Scup Alternatives

The proposed action for scup is to impose Federal management measures in the EEZ that, in combination with management measures in place in state

waters, would achieve the coastwide harvest limit of 2.71 million lb (1.23 million kg). The proposed action would achieve this goal by implementing one of two alternative management regimes (i.e., NMFS Scup Alternative 1 and NMFS Scup Alternative 2).

The impacts of the Council's disapproved Preferred Scup alternative were assessed using the quantitative method described above. Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 10 inches (25.4 cm) TL, that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 to June 30 and November 1 to December 31. The analysis concluded that the measures would affect 2.1 percent or less of the party/charter trips in any of the states, with impacts identified in Massachusetts (\$110,197), Delaware (\$15,976), New Jersey (\$6,574), Rhode Island (\$2,590), Connecticut (\$1,195) and New York (\$478). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with the Council's Preferred Scup Alternative was estimated to be \$7,988 in Delaware, \$1,900 in Massachusetts, \$219 in New Jersey, \$185 in Rhode Island, \$149 in Connecticut, and \$17 in New York. This analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips even if the restrictions limit their landings. In addition, although the Federal coastwide measures would apply to federally permitted vessels wherever they fish, state-only permitted vessels will likely be fishing under different recreational measures for scup, because the Commission has adopted a conservation equivalency addendum.

The impacts associated with NMFS Scup Alternative 1 are as follows: Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 10 inches (25.4 cm) TL, that landed more than 20 scup, or that landed at least one scup during the proposed closed seasons of March 1 to June 30 and October 3 to December 31. The analysis concluded that the measures in Alternative 1 would affect 4 percent or less of the party/charter trips in any of the states, with impacts identified in New York (\$375,890), Massachusetts (\$180,635), Rhode Island (\$29,163), New Jersey (\$26,972), Connecticut (\$20,199), and Delaware (\$16,534). The statewide revenue losses

associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with NMFS Scup Alternative 1 was estimated to be \$13,425 in New York, \$8,267 in Delaware, \$3,114 in Massachusetts, \$2,525 in Connecticut, \$2,083 in Rhode Island, and \$899 in New Jersey. This method of analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips even if the restrictions limit their landings. Although the Federal coastwide measures would apply to federally permitted vessels wherever they fish, state-only permitted vessels will likely be fishing under different recreational measures for scup because the Commission has adopted a scup conservation equivalency addendum.

For NMFS Scup Alternative 2, impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 9 inches (22.86 cm) TL, that landed more than 20 scup, or that landed at least one scup during the proposed closed seasons of March 1 to September 1 and November 1 to December 31. The analysis concluded that the measures in Alternative 2 would affect 7.3 percent or less of the party/charter trips in any of the states, with impacts identified in New York (\$434,256), Massachusetts (\$388,838), New Jersey (\$314,856), Rhode Island (\$50,278), Delaware (\$23,466), and Connecticut (\$22,032). The statewide revenue losses associated with these impacts are shown here in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with NMFS Scup Alternative 2 was estimated to be \$15,509 in New York, \$11,733 in Delaware, \$10,495 in New Jersey, \$6,704 in Massachusetts, \$3,591 in Rhode Island, and \$2,754 in Connecticut. These estimates are likely to be high because some anglers would likely continue to take party/charter vessel trips even if the restrictions limit their landings. Also, state-only permitted vessel will potentially be fishing under different recreational measures for scup due to the adoption of conservation equivalency by Commission.

For non-preferred Scup Alternative 3, impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one scup smaller than 9 inches (22.86 cm) TL, that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 to October 7 and November 1 to December

31. The analysis concluded that the measures in Alternative 3 would affect 9.6 percent or less of the party/charter trips in any of the states, with impacts identified in New York (\$538,318), Massachusetts (\$481,506), New Jersey (\$325,453), Rhode Island (\$69,043), Connecticut (\$48,804), and Delaware (\$41,195).

The average maximum gross revenue loss per party/charter vessel associated with Scup Alternative 3 was estimated to be \$20,597 in Delaware, \$19,226 in New York, \$10,848 in New Jersey, \$8,302 in Massachusetts, \$6,101 in Connecticut, and \$4,932 in Rhode Island. These estimates are likely to be high because some anglers would likely continue to take party/charter vessel trips even if the restrictions limit their landings. Also, state-only permitted vessels will potentially be fishing under different recreational measures for scup due to the adoption of conservation equivalency by the Commission.

Impacts of Black Sea Bass Alternatives

The proposed black sea bass alternative is designed to achieve the 3.43 million lb (1.55 million kg) harvest limit and to reduce landings by at least 16 percent, compared to 2001. Although only a 12-percent reduction in landings (relative to 2001) is required, it was not possible to develop precise measures using only a minimum fish size and a possession limit. Impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one black sea bass smaller than 11.5 inches (29.21 cm) TL or that landed more than 25 black sea bass. NMFS concluded through the analysis that the proposed alternative would affect 1.8 percent or less of the party/charter trips in any of the states, with impacts identified in New Jersey (\$178,324), Maryland (\$78,365), Delaware (\$55,457), Virginia (\$39,999), North Carolina (\$13,785), and Rhode Island (\$1,355). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with the proposed black sea bass alternative was estimated to be \$26,122 in Maryland, \$11,091 in Delaware, \$3,075 in New Jersey, \$1,818 in Virginia, \$1,378 in North Carolina, and \$54 in Rhode Island. As stated above, these estimates represent maximum potential losses because it is likely that anglers will continue to take party/charter trips rather than quit altogether, due to the new restrictions.

For black sea bass non-preferred Alternative 1, impacted trips were defined as trips taken aboard party/

charter vessels in 2001 that landed at least one black sea bass smaller than 11 inches (27.94 cm) TL, that landed more than 25 black sea bass, or that landed at least one black sea bass during the closed season (December 1 - May 18). The analysis concluded that the proposed alternative would affect 5.5 percent or less of the party/charter trips in any of the states, with impacts identified in New Jersey (\$238,920), Maryland (\$81,792), Delaware (\$64,342), Virginia (\$44,501), Rhode Island (\$39,442), North Carolina (\$15,418), and Massachusetts (\$3,426). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with black sea bass non-preferred Alternative 1, was estimated to be \$27,264 in Maryland, \$12,868 in Delaware, \$4,119 in New Jersey, \$2,023 in Virginia, \$1,578 in Rhode Island, \$1,542 in North Carolina, and \$36 in Massachusetts.

For black sea bass non-preferred Alternative 2, impacted trips were defined as trips taken aboard party/charter vessels in 2001 that landed at least one black sea bass smaller than 11 inches (27.94 cm) TL, that landed more than 15 black sea bass, or that landed at least one black sea bass during the closed seasons (March 1–April 31 and December 27–December 31). NMFS concluded through the analysis that the proposed alternative would affect 5.5 percent or less of the party/charter trips in any of the states, with impacts identified in New Jersey (\$1,360,775), Maryland (\$110,317), Delaware (\$52,908), Virginia (\$41,115), North Carolina (\$13,785), Rhode Island (\$4,582), New York (\$3,307), and Massachusetts (\$518). The statewide revenue losses associated with these impacts are shown in parentheses.

The average maximum gross revenue loss per party/charter vessel associated with non-preferred Alternative 2 was estimated to be \$36,772 in Maryland, \$23,462 in New Jersey, \$10,582 in Delaware, \$1,869 in Virginia, \$1,378 in North Carolina, \$183 in Rhode Island, \$59 in New York, and \$5 in Massachusetts.

Potential revenue losses in 2002 could differ for party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. In Rhode Island, for example, losses could reach \$6,481 for each vessel that lands all three species in 2002, compared to 2001. However, in Maryland, a vessel that lands all three species could potentially lose up to a

maximum of \$32,151 in 2002. On average, the largest potential losses were projected for party/charter vessels operating out of New York, New Jersey, Delaware, and Maryland in 2002.

It is important to re-emphasize that the revenue losses discussed above represent the maximum potential gross revenue losses per vessel. These losses were calculated by assuming that all of the angler trips constrained by the proposed measures would no longer occur. Because anglers would continue to have the ability to engage in catch-and-release fishing for summer flounder, scup, and black sea bass and because of the numerous alternative target species available to anglers, the reduction in effort and associated expenditures should be substantially lower than indicated in this summary. The lack of demand models limits the ability to empirically estimate how sensitive the affected anglers might be to the proposed regulations. Because the proposed measures affect the number and size of the fish that may be kept and do not prohibit anglers from engaging in catch and release fishing or fishing up to the possession limit, demand and revenues for party/charter vessels are expected to remain relatively stable.

The RIR/IRFA is available from the Council (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.100(d), as a proposed correction, introductory text is added to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(d) *Commercial measures.* * * *

3. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to

the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

4. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 17 inches (43.18 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

5. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than eight summer flounder in, or harvested from the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. ***

* * * * *

6. § 648.107 is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

For 2002, the Regional Administrator has determined that conservation equivalent measures shall be implemented by the states for the recreational summer flounder fishery. Therefore:

(a) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall not be subject to the more restrictive Federal measures pursuant to the provisions of § 648.4(b). Those vessels shall be subject

to the recreational fishing measures implemented by the state in which they land.

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—January 1 through December 31; minimum size—18 inches (45.72 cm); and possession limit—one fish.

7. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Time and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6) and fishermen subject to the possession limit may not

possess scup, except from January 1 through February 28 and from September 2 through October 31. This time period may be adjusted pursuant to the procedures in § 648.120.

8. In § 648.124, paragraph (b) is revised to read as follows:

§ 648.124 Minimum fish sizes.

* * * * *

(b) The minimum size for scup is 9 inches (22.86 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

* * * * *

9. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.125 Possession limit.

(a) No person shall possess more than 20 scup in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.***

* * * * *

10. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7) and fishermen subject to the possession limit may not possess black sea bass, except from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.140.

11. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Minimum sizes.

* * * * *

(b) The minimum size for black sea bass is 11.5 inches (29.21 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

* * * * *

[FR Doc. 02-12779 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 67, No. 100

Thursday, May 23, 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

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of rescheduled resource advisory meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92-463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Sierra and Sequoia National Forests' Resource Advisory Committee (RAC) for Fresno County will meet on July 16, 2002, 6:30-9:30 p.m. instead of June 18, 2002. The meeting is rescheduled due to the completion of the voting for projects recommended for 2001 funds at the May 14th meeting. The Fresno County Resource Advisory Committee will meet at the Districts Ranger's office, Prather, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditures of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on July 16, 2002. The meeting will be held from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The Fresno County RAC meeting will be held at the Sierra National Forest, High Sierra District Ranger office, 29688 Auberry Road, Prather, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611, (559) 297-0706 ext. 4804; e-mail skexline@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the May 14, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Discuss the status

of the 2001 projects' funds; (4) Discuss the Board of Supervisors meeting of June 4th; (5) Consideration of Title II Project proposals from the public and/or the RAC members; (6) Determine the date and location of the next meeting; (7) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 14, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02-12884 Filed 5-22-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on May 30, 2002, in Quincy, California. The purpose of the meeting is to evaluate final proposals for recommendation to the Plumas National Forest Supervisor for funding/implementation under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES AND ADDRESSES: The meeting will take place from 9-4 p.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283-7850; or by e-mail eataylor@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items for the meeting include: (1) Review applicable sections of the Secure Rural Schools and Community Self-Determination Act of 2000, regarding project recommendations; (2) Discuss & approve project selection process; (3) Discuss & select projects to recommend to the Forest Supervisor for funding; (4) Discuss & confirm logistics for forwarding recommended projects to Forest Supervisor (FS) and to project

proponents following FS approval; and (5) Future meeting schedule/logistics/agenda.

The meeting is open to the public and individuals may address the Committee after being recognized by the Chair.

Dated: May 10, 2002.

Fred J. Krueger,

Public Services Staff Officer.

[FR Doc. 02-12930 Filed 5-22-02; 8:45 am]

BILLING CODE 3410-11-M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The U.S. Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on June 4, 2002, at 2175 K Street, NW., Suite 400 Conference Room, Washington DC. The Board will discuss and deliberate on staff evaluation of responses from recipients of CSB recommendations. The Board will also hear a status report on the investigation of a chemical plant fire at Third Coast Packaging Company in Friendswood, Texas on May 1 and an explosion and fire incident at the Kaltech Company facility in the Chelsea section of New York City on April 25. In addition, the Board will hear an update on the Reactive Chemical Hazards Investigation.

At the meeting CSB staff will present to the Board proposed status assignments to recommendations resulting from several completed investigations. The assignments include categories that specify if the recommendation was successfully adopted and if it is open or closed. The Board will discuss the proposals presented by the staff.

Recommendations are issued by a vote of the Board. They address an identified safety deficiency uncovered during an investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. CSB recommendations may be directed to government entities, safety organizations, corporations, trade associations, labor unions, and others. With the issuance of a final report and recommendations, the Board begins the

process that promotes saving lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the relevant issues and factors. No factual analyses, conclusions, or findings should be considered final. Only after the Board has analyzed and reviewed the staff proposal, and voted to approve the status will there be a final record of board action.

The meeting is open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of Prevention, Outreach, and Policy, (202)-261-7600, or visit our website at: www.csb.gov.

Christopher W. Warner,
General Counsel.

[FR Doc. 02-13169 Filed 5-21-02; 3:18 pm]

BILLING CODE 6350-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Steel Concrete Reinforcing Bars from Turkey.

Initiation of Reviews: In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
The People's Republic of China: Brake Rotors,* A-570-846 China National Machinery and Equipment Import & Export (Xianjiang) Corporation, and manufactured by any company other than Zibo Botai Manufacturing Co., Ltd China National Automotive Industry Import & Export Corporation, and manufactured by any company other than Laizhou CAPCO Machinery Co., Ltd Laizhou CAPCO Machinery Co., Ltd. and manufactured by any company other than Laizhou CAPCO Machinery Co., Ltd Laizhou Luyuan Automobile Fittings Co., and manufactured by any company other than Laizhou Luyuan Automobile Fittings Co., or Shenyang Honbase Machinery Co., Ltd Shenyang Honbase Machinery Co., Ltd., and manufactured by any other company other than Shenyang Honbase Machinery Co., Ltd., or Laizhou Luyuan Automobile Fittings Co Beijing Concord Auto Technology, Inc China National Machinery Import & Export Company Laizhou Auto Brake Equipment Co., Ltd Qingdao Gren Co Yantai Winhere Auto-Part Manufacturing Co., Ltd Longkou Haimeng Machinery Co., Ltd Zibo Luzhou Automobile Parts Co., Ltd Laizhou Hongda Auto Replacement Parts Co., Ltd Hongfa Machinery (Dalian) Co., Ltd Qingdao Meita Automotive Industry Co., Ltd Shangdong Laizhou Huanri Group General *If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part	4/1/01-3/31/02
Turkey: Certain Steel Concrete Reinforcing Bars A-489-807 Ekinciler Holding, A.S./Ekinciler Demir Celik A.S Colakoglu Metalurji A.S./Colakoglu Dis Ticaret ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Ticaret A.S./Diler Dis Ticaret A.S Habas Sinai ve Tibbi Gazler Istihsal Endustrisi A.S	4/1/01-3/31/02
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under §351.211 or a determination under §351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 16, 2002.

Holly A. Kuga,

*Senior Office Director, Group II, Office 4,
Import Administration.*

[FR Doc. 02-13008 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-823; A-834-807; A-307-820]

Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of amended final determination of sales at less than fair value and antidumping duty orders.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Brett Royce (India), Cheryl Werner (Kazakhstan), and Deborah Scott (Venezuela) at (202) 482-4106, (202) 482-2667, and (202) 482-2657,

respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("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's regulations are to the regulations at 19 C.F.R. part 351 (2001).

Background

On April 2, 2002, the Department published its final determinations in the antidumping duty investigations of silicomanganese from Kazakhstan, India, and Venezuela. *See Notice of Final Determination of Sales at Less than Fair Value and Final Negative Critical Circumstances Determination: Silicomanganese from India*, 67 FR 15531 (April 2, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Silicomanganese from Kazakhstan*, 67 FR 15535 (April 2, 2002); and *Notice of Final Determination of Sales at Less than Fair Value: Silicomanganese from Venezuela*, 67 FR 15533 (April 2, 2002).

On May 16, 2002, the International Trade Commission ("ITC") notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from India, Kazakhstan, and Venezuela.

Scope of the Orders

For purposes of these orders, the products covered are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in

steel production as a source of both silicon and manganese.

Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040. This scope covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, our written description of the scope remains dispositive.

The low-carbon silicomanganese excluded from this scope is a ferroalloy with the following chemical specifications: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon and maximum 0.05 percent sulfur. Low-carbon silicomanganese is used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.99.5040.

Amended Final Determination: Silicomanganese from India

On April 8, 2002, we received a submission from Eramet Marietta Inc. (Eramet) and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639 (collectively, petitioners) alleging two ministerial errors in the final determination calculations in the investigation of imports from India. The allegations concerned the Department's calculations for one respondent, Universal Ferro and Allied Chemicals, Ltd (Universal). *See Analysis for Universal Ferro & Allied Chemicals, Ltd. (Universal) for the Final Determination in the Investigation of Silicomanganese from India for the Period April 1, 2000 Through March 31, 2001, (India Final Analysis)* (March 25, 2002). The allegations were timely filed pursuant to

section 351.224(c)(2) of the Department's regulations. On April 16, 2002, we received a rebuttal submission from Universal. These two allegations are addressed below.

We did not receive any timely submissions alleging ministerial errors in the India investigation with respect to the other respondent, Nava Bharat. See *Memorandum on Disclosure of Final Determination Documents in the Antidumping Investigation of Silicomanganese from India: Nava Bharat Ferro Alloys, Ltd. (Nava Bharat)*, from Javier Barrientos, through Sally C. Gannon, to the File (April 26, 2002). No ministerial allegations were received concerning the final determinations for Kazakhstan or Venezuela.

Ministerial Allegation 1: Cost of Slag

Petitioners contend that the Department made a ministerial error in calculating the cost of slag included in Universal's total cost of manufacture (COM). Petitioners argue that the Department claimed that, for the final calculations, it was assuming that all slag was used for non-conversion products. See *India Final Analysis*, at 3 ("For these final calculations we are assuming that all slag was used for non-conversion products."). Petitioners argue that the Department's calculation of the amount of slag costs to be included in COM is inconsistent with its statement that all slag costs were presumed to be consumed in the production of non-conversion silicomanganese. Specifically, petitioners maintain that the Department allocated only a portion of the total cost of slag to non-conversion silicomanganese. As per the Department's stated presumption that all slag was used for non-conversion products, petitioners claim that no allocation between conversion and non-conversion products was necessary.

Accordingly, petitioners request that the Department amend its final calculations to include all slag costs in Universal's COM.

In regard to the above allegation, the respondent maintains that petitioners selectively extracted parts of the Department's *India Final Analysis* to substantiate their ministerial error claim regarding the calculation of slag costs. Specifically, the respondent argues that the petitioners disregarded Department references in which the Department explicitly stated its intention to use a ratio of silicomanganese production in order to allocate slag costs. See *India Final Analysis*, at 2 ("We then multiplied this amount by the ratio of silicomanganese production quantity ... to total production quantity ... to derive

an amount attributable to subject merchandise.") Thus, according to the respondent, the Department's calculation method was intentional, and, therefore, there is no ministerial error.

According to the respondent, these statements by the Department regarding the use of an allocation ratio are contradicted by other statements made by the Department presuming that all slag was used for non-conversion products. According to the respondent, the Department only made this assumption as a result of its inability to locate the amount of slag used in the conversion products in Exhibit 5 of the verification exhibits. The respondent contends that it could have directed the Department to the subject information, if asked. Under these conditions, the respondent contends that there is no ministerial error, and that the Department would likely end up "confessing error before the Court of International Trade and seeking a remand."

Department's Position:

We agree with petitioners that the Department's objective was to assume slag was used only for non-conversion silicomanganese products. We made this assumption in applying adverse facts available, given our conclusion that the respondent had not provided the proper information. However, as the respondent has verified information on the record confirming its use of slag in conversion products (Verification Exhibit 5), the application of adverse facts available is no longer warranted. Therefore, the existing allocation of slag costs used in our calculations, which is between non-conversion and conversion silicomanganese products, is correct and no correction to the final determination calculations in this regard is necessary.

Ministerial Allegation 2: Interest Expense Ratio

Petitioners argue that the Department committed a ministerial error in its calculation of the ratio used to calculate the interest expense component of Universal's cost of production (COP). According to petitioners, based on the data in the *India Final Analysis*, the Department incorrectly calculated the revised interest expense ratio. As a result, they state that the Department should amend its final calculations to incorporate the correct interest expense ratio in the calculation of Universal's total COP. Respondent did not comment on this allegation.

Department's Position:

The Department agrees with petitioners in that, based on the data in the *India Final Analysis*, the ratio used to calculate the interest expense component of Universal's COP was calculated inaccurately as a result of an arithmetic error. The Department is revising its final calculations to incorporate the correct interest expense ratio in Universal's total COP for this amended final determination. See *Analysis for Universal Ferro & Allied Chemicals, Ltd. (Universal) for the Amended Final Determination in the Investigation of Silicomanganese from India for the Period April 1, 2000 Through March 31, 2001* (May 17, 2002). As a result of this modification to the interest expense ratio, the margin for Universal has changed along with the "all others" rate, which was based on the average of the rates for Nava Bharat and Universal. Universal's margin has increased from 20.42 percent to 20.53 percent, and the "all others" rate has increased from 17.69 percent to 17.74 percent.

Antidumping Duty Orders

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of silicomanganese from India, Kazakhstan, and Venezuela. The antidumping duties will be assessed on all unliquidated entries of silicomanganese from India, Kazakhstan, and Venezuela entered, or withdrawn from warehouse, for consumption on or after November 9, 2001, the date on which the Department published its notices of preliminary determination in the Federal Register. Customs must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "all others" and "Kazakhstan-wide" rates apply to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin
<i>India</i> Nava Bharat Ferro Alloys, Ltd.	15.32%

Exporter/Manufacturer	Weighted-Average Margin
Universal Ferro and Allied Chemicals, Ltd.	20.53%
All Others	17.74%
Kazakhstan	
Alloy 2000, S.A.	247.88%
Kazakhstan-Wide	247.88%
Venezuela	
Hornos Electricos de Venezuela, S.A.	24.62%
All Others	24.62%

This notice constitutes the antidumping duty orders with respect to silicomanganese from India, Kazakhstan, and Venezuela, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of Act and 19 C.F.R. 351.211.

Dated: May 17, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-13007 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-437-804]

Sulfanilic Acid From Hungary: Postponement of Final Determination and Extension of Provisional Measures of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final antidumping duty determination and extension of provisional measures: Sulfanilic acid from Hungary.

SUMMARY: The Department of Commerce is postponing the final determination of the antidumping duty investigation of sulfanilic acid from Hungary. This postponement is made pursuant to section 735 (a)(2) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. Suspension of liquidation will be extended accordingly.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney at (202) 482-1778, AD/CVD Enforcement, Office 1, DAS Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue NW., Washington, DC 20230.

Postponement of Final Determination and Extension of Provisional Measures

On April 26, 2001, the Department of Commerce, ("the Department") issued its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary*, 67 FR 30358 (May 6, 2002) ("Preliminary Determination"). The *Preliminary Determination* notice indicated that the final determination would be made by not later than 75 days after the date of the *Preliminary Determination*.

Pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended ("the Act"), on May 13, 2002, Nitrokemia 2000 Rt. ("Nitrokemia 2000"), the sole participating respondent in this investigation, requested that the Department postpone its final determination to no later than 135 days after the date of publication of the preliminary determination in the **Federal Register**.¹ Nitrokemia 2000 further requested that the Department extend to not more than six months the application of the provisional measures prescribed under paragraphs (1) and (2) of section 733(d) of the Act. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), because (1) the preliminary determination in this case is affirmative, (2) the request for postponement was submitted in writing by an exporter who accounts for a significant proportion of exports of the subject merchandise in this investigation, and (3) no compelling reason for denial exists,² we are postponing the final determination until not later than 135 days after the publication of the preliminary determination in the **Federal Register** (i.e., until not later than September 18, 2002). Suspension of liquidation will be extended accordingly.

This extension is in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2).

¹ Nitrokemia had previously requested a postponement of the final determination on April 8, 2002. However, that request was subsequently withdrawn on April 11, 2002.

² We note that, in response to Nitrokemia's original request for postponement of the final determination, on April 12, 2002, the petitioner submitted a letter objecting to Nitrokemia's request. The petitioner objected because, in light of the alignment of the concurrent countervailing duty investigation with the instant proceeding, Nitrokemia would not have to deposit countervailing duties once the provisional measures period in that investigation expires. However, we did not consider this objection to constitute a compelling reason to deny Nitrokemia's request for a postponement.

Dated: May 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-13009 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041602B]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB) has been issued to The Boeing Company (Boeing).

DATES: Effective from May 20, 2002, until May 20, 2003.

ADDRESSES: The application is available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona Perry, (301) 713-2322, ext. 106 or Christina Fahy, (562) 980-4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking

will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 28, 2001, NMFS received an application from the 30th Space Wing on behalf of Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals, and other marine mammal species, incidental to harbor activities related to the Delta IV/EELV, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging. The harbor where activities will take place is on south VAFB approximately 4 kilometers (km) (2.5 miles, mi) south of Point Arguello, CA, and approximately 1.6 km (1 mi) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Modifications to the existing wharf are needed to accommodate the specially designed transport vessel, the Delta Mariner, that will be used for

delivering the Delta IV/EELV's common booster core (CBC). These modifications involve removing portions of the wharf surface, re-surfacing the wharf with concrete and stainless steel rub-rails, and construction of a ramp on the seaward portion of the wharf. Equipment to be used includes: a skip-loader, concrete saw, concrete ready-mix truck, and dump truck. Measured noise levels of equivalent heavy equipment ranged from 61 dB A-weighted (quietest measurement from clamshell dredge measurement) to 81 dB A-weighted (loudest measurement from roll-off truck transporter) at a distance of 76.2 meters (m) (250 feet, ft). (Acentech, 1998). These wharf modifications will take approximately 6 weeks.

Delta Mariner CBC off-loading operations and associated cargo movement activities will occur a maximum of 6 times per year, with the first Mariner visit scheduled for spring of 2002 and the first off-load operation for August 2002. The Delta Mariner is a 95.1 m (312 ft) long, 25.6 m (84 ft) wide steel hull ocean-going vessel capable of operating at a 2.4 m (8 ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the Mariner. Sources of noise from the Delta Mariner vessel include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the CBC from the Mariner requires use of an Elevating Platform Transporter (EPT). The EPT is an additional source of noise, with sound levels measured at a maximum of 82 dB A-weighted 6.1 m (20 ft) from the engine exhaust (Acentech, 1998). EPT operation procedures require 2 short (approximately 1/3 seconds) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the Mariner by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of Mariner docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the Delta Mariner, the harbor will need to be dredged to a working depth of approximately 3.0 m (10 ft) mean lower low water level plus a 0.61 m (2 ft) over-dredge. Dredging of the harbor will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to

those estimated for the wharf modification equipment: 61–81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24-hours a day for 3–5 weeks. The frequency of maintenance dredging will be based on fill rate surveys conducted periodically during the first year following the initial dredge to determine the sedimentation rate. Boeing expects maintenance dredging would likely be required every 2–3 years.

A more detailed description of the work proposed for 2002 is contained in the application which is available upon request (see ADDRESSES) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSRI, 2001).

Comments and Responses

On March 4, 2002 (67 FR 9702), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC), Boeing, The Otter Project, and two private citizens. NMFS has not addressed in this document those comments and/or information that are contained in, and not in disagreement with, statements made in either the Boeing application or the notice of proposed authorization (67 FR 9702, March 4, 2002).

Activity Concerns

Comment 1: Has any work actually begun on this application (meaning physical work at the harbor) without NMFS benefit of public comment?

Response: None of the actions covered in the permit application have begun.

Comment 2: Why hasn't the noise from the jackhammer been included in Boeing's application?

Response: Boeing's application includes an initial list of equipment required for the wharf modification that was requested from the construction contractor. A jackhammer was not listed on this initial list. The contractor has since informed Boeing that a jackhammer will be required for approximately a week. National Institute for Occupational Safety and Health (NIOSH) data shows that a jackhammer will generate between 102–111 dB measured at the operator's ear.

Comment 3: Where was the EPT noise level of 85 dB measured from? What is the noise level when the EPT engine is under a load condition? Is the EPT engine diesel, gasoline, or powered by some other source?

Response: The EPT noise level of 85 dB was measured less than 6.1 m (20 ft) from the engine exhaust. The measurement provided in the application was the noise level of the EPT with the engine revved. The engine runs at a constant speed with power to the drive train regulated by a hydraulic pump. The noise level of the EPT under load would be comparable to, but not precisely the same as, the noise measurements provided. The engine powering the EPT is a Diesel engine, manufactured by Daimler Chrysler AG (Mercedes), model OM442A, 340 HP. It conforms to 2000 U.S. EPA California and Canada regulations for large non-road compression-ignition engines. It is certified to be operated on diesel fuel.

Comment 4: Is the "tractor tug" electric, diesel, or gasoline powered? Is the tractor tug actually the roll-off truck transporter listed in the application? Define the "operational mode" of the "tractor tug." For example, what is the noise level when the "tractor tug" engine is under a load condition?

Response: The tractor tug is more accurately referred to as a standard diesel truck tractor. It has yet to be purchased, but the selected manufacturer is Peterbilt. The noise level will meet OSHA standards. Operational mode is the condition of operation under a load. The noise level under a load condition under load would be comparable to but not precisely the same as the noise measurements provided in the application.

Comment 5: How much dredge material will be generated? Where is the National Environmental Policy Act (NEPA) documentation to support placement of this dredged material?

Response: 3,000–5,000 cubic yards of dredge material will be generated. All dredge activities, including the maintenance dredging, were described and evaluated in the final Environmental Assessment (EA) for Harbor Activities at VAFB, dated July 2001. In the future, dredged material will either be used for beach replenishment at a site about 3.2 km (2 mi) south of the harbor, or will be used to refill an old quarry at Point Pedernales (Honda Point) back to its original profile. Beach replenishment would entail placing the sediments in the shallow sub-tidal where it will be re-entrained in the long-shore current.

Comment 6: Who makes the determination that the crew and captain of the Delta Mariner are capable of approaching and successfully mooring at the wharf? Will the same crew and captain that the tug boats accompany for

these first few visits be present for all other visits?

Response: Both captain and vessel are licensed by the United States Coast Guard (USCG). The USCG also issues the Certificate of Inspection that gives a vessel the operational endorsement for conducting "voyages" in the Coastwise Registry. This includes the necessary arrival and departure from wharves or docks.

The captains and crew of the Delta Mariner were selected by their professional skill and experience operating large tankers on the U.S. West Coast. The captains will have been operating the Mariner for over 2 years prior to visiting VAFB harbor during the latter half of 2002. The experience of the captains and the crew operating the Mariner includes constrained inland water passages and open ocean voyages over a wide spectrum of environmental conditions.

Foss, the tug boat company, is aware that greater caution is required for mooring and cargo operations at VAFB than at other Delta IV ports. Foss will put safety before schedule and approach the VAFB wharf in weather, tide, and sea conditions that reduce risk. After the first arrival of the Delta Mariner at the VAFB harbor, Foss intends to have a captain aboard the vessel that has previously called at VAFB.

Foss will use tug boats local to the ports of Hueneme or Los Angeles requesting officers with VAFB harbor experience. Neither Foss nor Boeing can control who is assigned to operate the tug boat, but it is not a sound business decision to send the inexperienced operator.

Comment 7: Where are the noise contour charts of the 10-fold increase to the ambient background to support the application?

Response: The EPT horn maximum noise level is 112 dB. A jackhammer maximum noise level is 111 dB. Ambient noise measured at the VAFB harbor is between 35 and 48 dB on a typical day (ENSRI, 2001). Given that $35 \text{ dB} \times 10 = 350$ and $48 \text{ dB} \times 10 = 480$, 112 dB is only 2–3 times higher than the measured ambient background noise.

Comment 8: Regarding the initial dredging, is the responsible entity NMFS (for the initial dredging details listed in the public notice but not in the application), VAFB or Boeing? If NMFS authorizes Boeing as stated in the **Federal Register**, then will NMFS issue a separate authorization to VAFB for the VAFB harbor maintenance dredging? Based on the NEPA documents referenced, who has responsibility as the action proponent for the actions listed in the application?

Response: In accordance with agreements signed by the Air Force and Boeing, Boeing is responsible for payment of all fines or penalties imposed as a result of administrative or judicial enforcement actions or citizens' suits for violations of federal, state, or local laws or regulations arising out of the conduct or activities related to the agreement. Boeing is the action proponent.

Comment 9: Is the previous harbor dredging required to support April 2002 operations? If so, was there an incidental harassment authorization application for this initial dredging?

Response: The previous dredging was to allow for the delivery of the launch table, an oversized steel structure that is part of the launch pad. The launch table was built in Washington State and moved down the coast by barge, as it was far too large to go by road. It required the use of the VAFB harbor and resulted in the 2001 dredging. There was no application for a marine mammal incidental harassment authorization since NMFS was of the opinion at the time that MMPA coverage was not necessary for the dredging operation because few marine mammals were likely to occur in the project area and harassment was unlikely. However, to ensure that NMFS' opinion was correct, monitoring was required during initial dredging, and this monitoring showed that there were small numbers of harbor seals hauled out on rocks 180 m (591 ft) from the dock. Since these seals could potentially be harassed by harbor activities, Boeing decided to apply for the requisite MMPA authorization.

Comment 10: Has NMFS unilaterally determined these initial dredging requirements to support Delta Mariner operations in the absence of any request in the application? Is NMFS asking the public to comment on an action in an application that has already begun without NMFS authorization?

Response: NMFS was of the opinion at the time of initial dredging that a permit was not necessary for the operation. None of the actions covered in Boeing's authorization application have begun.

Marine Mammal Impact Concerns

Comment 11: Is leaving out impacts on the dolphins mentioned in the application an oversight on the part of NMFS or a technical deficiency of the application?

Response: The dolphins referenced in the application are a cluster of concrete piles topped with a bollard and used for mooring a vessel.

Comment 12: Where is the scale navigational chart showing current depths, proposed depths for the initial dredging (if included in this application), area to be dredged, and location of seal haul-outs? At what distance are the marine mammals expected to be during these periods of vessel activity in harbor)?

Response: This application does not include the initial dredging. As addressed in Comment 9, there was no MMPA authorization during initial dredging. The application contains a photo with an outline of the dredge area. This same photo also indicates where the harbor seals haul out during low tide. The distance is 180 m (591 ft) from the main seal haul-out to the southern edge of the dock.

Comment 13: Where are the analyses to address air quality impacts on marine mammals from the operation of the Delta Mariner, the heavy equipment involved with wharf modifications, and the heavy equipment involved with launch vehicle/cargo handling? Where are the impact analyses on marine mammals to support Delta Mariner discharges from shipboard hotel services as well as the typical in-port maintenance that is conducted?

Response: Analysis of air quality in general was addressed in the Supplemental EIS, dated March of 2000. However, this air quality analysis did not address potential impacts to marine mammals. There will be no discharge from shipboard hotel service or in-port maintenance while the Delta Mariner is in the harbor. The Delta Mariner will be making deliveries, and will minimize time spent at VAFB.

Comment 14: Where are the analyses of the resultant harassment associated with loss of bottom flora and fauna in the food chain for marine mammals, impacts on water quality (e.g., turbidity, pollutants), and other potentially adverse impacts in this application to support the conclusions cited in the public notification that there is at worst only temporary modification to behavior?

Response: As discussed in other responses, the re-dredging activity will be limited to those areas that had been dredged in the past. Based on studies conducted over the past two decades and cited in the EA (ENSRI, 2001), benthic resources in the dredge footprint consist of small infaunal invertebrates. Harbor seals foraging in the area around the harbor do not feed on these small organisms directly. Fish that could feed on these organisms and that could be a potential food source for the seals are sufficiently wide ranging that they would not be substantially

affected by this temporary loss of a food source. The benthic community has developed over the past 18 years since the current harbor configuration was created. Because this community is adapted to this very dynamic environment of moving sands, it is expected to recover quickly after dredging events. Thus, the continued periodic dredging of the harbor is not expected to directly or indirectly affect the food resources of the adjacent seals.

Comment 15: Based on recent NMFS concerns over US Navy, commercial, and private water-borne noise issues and their significant adverse effects on marine mammals, where are the analyses to address water-borne noise impacts from the operation of the Delta Mariner in such shallow water, the heavy equipment involved with wharf modifications, and the heavy equipment involved with vehicle/cargo handling?

Response: There have been very few studies on the effects of water-borne noise from dredging or other construction operations on marine mammals. NMFS is currently in the process of determining safety criteria for marine species exposed to underwater sound, including impulsive and continuous noise. Until the agency publishes these criteria, however, NMFS has preliminarily determined that marine mammals may risk incurring a temporary threshold shift when exposed to underwater impulsive sound pressure levels of 180 dB re 1 micro-Pa for cetaceans and 190 dB re 1 micro-Pa for pinnipeds. Marine mammals have also shown behavioral changes when exposed to impulse sound pressure levels of 160 dB re 1 micro-Pa and continuous sound pressure levels of 120 dB. NMFS does not believe that the underwater noise emanating from this project will be loud enough to harm marine mammals in the area. However, harbor seals may be temporarily displaced from the area due to a combination of disturbances: auditory exposure to underwater sound, and the visual exposure to boats, heavy equipment and people.

Comment 16: The MMC suggests that NMFS consider providing authorization for the disturbance of a small number of individuals of other marine mammal species that are uncommon, yet could possibly be disturbed, in the south VAFB area, including California sea lions, northern elephant seals, and northern fur seals.

Response: NMFS, in considering MMC's suggestion, has reviewed previous authorizations issued to VAFB as well as monitoring reports submitted as part of the reporting requirements of these authorizations. Based on review of

these reports, NMFS has concluded that this IHA to Boeing should include authorization to incidentally harass small numbers of California sea lions, northern elephant seals, and northern fur seals. This conclusion is based on reports that California sea lions haul out in small numbers on South Rocky Point (approximately 3 km or 1.9 mi from the boat dock area) and Point Sal (northern limit of VAFB) during the fall, and that northern elephant seal pups and juveniles sporadically haul out for short periods during the spring on both north and south VAFB. According to the IHA issued to Boeing, a maximum of 10 California sea lions, 10 northern elephant seals, and five northern fur seals may be incidentally harassed during Boeing's harbor activities on south VAFB.

Habitat Concerns

Comment 17: What impact will the placement of dredged materials have on marine mammals?

Response: Beach replenishment with dredged materials would entail placing the sediments in the shallow sub-tidal where it will be re-entrained in the long-shore current. Because marine mammals do not use this beach for hauling out, there will be no impacts from this disposal option. Disposal of dredged materials at Honda Point would entail activities essentially the same as those covered in the Final EA of July 2001. Regardless of which action is taken, the proper Air Force approval forms will be submitted to the 30th Space Wing for review, and a Supplemental EA for this activity will be prepared if it is deemed necessary.

Comment 18: Where are the elevation drawings showing the ramp modification with respect to typical tidal fluctuations, particularly high tides where the lower ramp may induce haul out of marine mammals onto it?

Response: Marine mammals do not currently use the wharf as a high tide haul-out location. Only 0.19 m (7.5 in) are being removed from the overall height of the wharf, which is unlikely to make the surface low enough to induce marine mammals to start using it for a high tide haul-out site. Based on the as-built drawings, the surface of the dock is approximately +12 ft (+3.7 m) mean lower, low water (MLLW). Since maximum high tides in the harbor are no more than about 8 ft (2.4 m) MLLW, harbor seals would be unable to and have not been observed to haul out on the dock.

Cumulative Impacts

Comment 19: What is the cumulative impact of harassing these marine

mammals over this extended period of time (14 hours) over repeated potential haul-out periods?

Response: Over 14 hours there are usually only two low tide periods and whether seals do or do not haul-out near the dock depends on how high the low tide is and how low the high tide is. For example: On a given day at VAFB, there was a low tide at 07:52 PST at -0.03 ft (-0.009 m)(seals could haul-out), high tide at 14:43 PST at 2.96 ft (0.9 m)(seals can not haul-out), low tide at 18:45 PST at 2.33 ft (0.7 m)(seals can not haul-out), and high tide at 01:22 PST at 4.68 feet (1.4 m)(seals can not haul-out). Out of this period of 17.5 hours there were only 2 low tides but only one low tide that seals would be able to haul-out at the harbor. Some seals may leave and haul-out someplace else or not come back until the next day. Depending on the tides, some seals may haul-out again after the initial disturbance from the vessel. Because the vessel operations are only for 14 hours on 1 day, it is expected that the seals will continue to use that site as they did during the dredging operations so there should be no cumulative impact problems.

Mitigation and Monitoring Concerns

Comment 20: Has NMFS unilaterally determined more detailed mitigation measures than are found in the application? If additional information was provided to NMFS to supplement the original application, why wasn't the application modified and the additional information resubmitted in a more accurate and complete application?

Response: The mitigation measures proposed in the **Federal Register** notice of March 4, 2002, follow mitigation NMFS has previously incorporated into IHAs for similar activities to ensure that marine mammal takes remain negligible. NMFS saw no reason to have such information re-submitted by the applicant.

Comment 21: How is NMFS dealing with the unanswered question associated with timing of harbor activities (with breeding, molting, or pupping seasons) and the inconsistent treatment of this issue in the mitigation plan?

Response: Harbor seals do not typically breed, molt, or pup in the south VAFB area where Boeing will be conducting harbor activities. The nearest pupping site is at Rocky Point, approximately 1.6 km (1 mi) north of the project area. However, the IHA monitoring plan requires Boeing to observe and record the age class and gender of all marine mammals before, during, and after harbor activities in order to verify that no breeding,

molting, or pupping takes place in the project area.

Comment 22: The MMC recommends that NMFS, if it has not already done so, assess whether the monitoring required as a condition of this and possible future incidental harassment authorizations will be adequate to detect possible non-negligible cumulative effects and, if not, what additional steps need to be taken to ensure that any such effects will be detected before they reach significant levels.

Response: NMFS believes that the monitoring requirements, along with the requirement of all IHA holders to report their monitoring results in a timely manner, will allow NMFS to assess the potential for cumulative effects on marine mammals and modify the conditions of the authorization if necessary.

Comment 23: Boeing requests that the mitigation measures proposed by NMFS in the **Federal Register** on March 4, 2002 (67 FR 9702), be modified to allow for the continuation of activities while seals are present, as this is consistent with NMFS' conclusion that there will be no more than a negligible impact on these marine mammals as a result of harbor activities.

Response: NMFS concurs and has thus modified the mitigation measures contained in the authorization to allow for continuation of activities while seals are present. The mitigation measures still require marine mammal monitoring during all Boeing activities in the harbor and reporting of any possible disturbance of the harbor seals associated with those activities.

MMPA Concerns

Comment 24: In the event of untoward impacts, injury to marine mammals, or violations of the permit which entity is held accountable and legally liable?

Response: In accordance with agreements signed by the Air Force and Boeing, Boeing is responsible for payment of all fines or penalties imposed as a result of administrative or judicial enforcement actions or citizens' suits for violations of federal, state, or local laws or regulations arising out of the conduct or activities related to the agreement.

Comment 25: Does VAFB have carte-blanc authorization to perform maintenance dredging at anytime for as long as it deems necessary?

Response: No, NMFS is not granting VAFB "carte-blanc" to perform maintenance dredging anytime for as long as it deems necessary. First, this authorization will be issued to Boeing not VAFB. And, second, the incidental

harassment authorization is only valid for 1 year and must be re-applied for annually. Boeing is responsible for re-application and subsequent maintenance dredging.

National Environmental Policy Act (NEPA) Concerns

Comment 26: Why hasn't NMFS challenged the legal sufficiency of the segmented actions of the NEPA analysis/documents referenced as supporting this application when in fact the cumulative actions (particularly those that will be conducted concurrently) in the application are not those analyzed in the NEPA analyses/documents?

Response: Before issuance of incidental harassment authorizations under the MMPA, NMFS must ensure that the environmental impacts of its decision to issue or deny such authorizations are in compliance with NEPA. A programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) stated that for issuance of an IHA, NMFS must first determine that the taking (by harassment) would not result in any serious injury or death to a marine mammal, would have no more than a negligible impact on marine mammals and their habitat, and would not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Therefore, NMFS' decision-making process for IHA issuance or denial independently and separately analyzes factors similar to those suggested under section 6.01 of National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) for determining the significance of agency actions for the purposes of NEPA. On a case-by-case basis, NMFS determines whether the issuance of an IHA will individually or cumulatively have a significant impact on the quality of the human environment.

NMFS has responsibility for insuring that its own actions are in compliance with NEPA. Except in regards to how Federal actions may impact resources protected under the MMPA, Endangered Species Act, or other marine resource laws and regulations, NMFS has no authority over the actions of other Federal agencies. NMFS reviewed all NEPA documents related to Boeing's request for a marine mammal authorization and found that these documents were sufficient to satisfy the

requirements of its decision-making process.

Boeing's January 28, 2001, request for an incidental harassment authorization was specifically for the incidental and unintentional take of marine mammals during a one-year period of harbor activities and does not account for future maintenance dredging and other operations in the harbor. Incidental takes of marine mammals as a result of these future activities must be covered under subsequent authorizations that Boeing must request and NMFS must send out for public comment.

Endangered Species Act Concerns

Comment 27: Possible impacts to the southern sea otter population have been overlooked and may need to be addressed. Decision on the incidental take permit request received by NMFS should be coordinated with U.S. Fish and Wildlife Service (FWS) officials to insure that impacts to southern sea otters are adequately addressed. In addition, applicants for marine mammal incidental take permits should be encouraged to apply for consultation and permits through both agencies.

Response: Because the southern sea otter is designated threatened under the Endangered Species Act and management authority for this marine mammal species lies with FWS, VAFB initiated a formal Section 7 consultation with the FWS in 1998 on Boeing's harbor activities. A Biological Opinion was written and Incidental Take Statement issued in August 2001. Southern sea otters were discussed in these documents and FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging. In addition, the FWS noted that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities. NMFS expects Boeing to fulfill its obligations for sea otter habitat restoration and cooperate in VAFB's southern sea otter monitoring program.

Description of Habitat and Marine Mammals Affected by the Activity

The only marine mammal species likely to be harassed incidental to harbor activities at south VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is

now estimated to be 1,040 (775 on south VAFB) based on sighting surveys and telemetry data (SRS Technologies 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out on rocks outside the harbor breakwater where Boeing will be conducting wharf modification, Delta Mariner operations, cargo loading, and dredging activities. The maximum number of seals present during past dredging of the harbor was 23, with an average of 7 seals sighted per day. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 kilometers (km) (1 mile, mi) north.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Three other marine mammal species are known to occur infrequently along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These three species are: the California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*) and northern fur seal (*Callorhinus ursinus*). Descriptions of the biology and local distribution of these species can be found in the application as well as other

sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the wharf modifications, Delta Mariner and off-loading operations, and dredging, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound levels from all equipment drops to a maximum level of 95 dB A-weighted within 15.2 m (50 ft) of the sources. In contrast, the ambient background noise measured approximately 76.2 m (250 ft) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to marine mammals hauled out in close proximity. Marine mammals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

According to the MMPA, when harbor activities disrupt the behavioral patterns of marine mammals, they are considered to be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the marine mammals, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such

as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and will not cause serious injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and would be considered a take by harassment due to disruption of behavioral patterns. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites, could potentially lead to takes by serious injury or death.

However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, since on average the number of marine mammals hauled out near the site is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes (i.e., Level B harassment).

For a further discussion of the anticipated effects of the planned activities on marine mammals in the area, please refer to the application and ENSRI's 2001 Final EA. Information in the application and referenced sources is adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 30 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 7 seals sighted during previous dredging operations in the harbor. Using the maximum and average number of seals hauled out per day, assuming that half of the seals will use the site at least twice, assuming that half of the seals hauled out will react to the activities, and using a maximum total of 83 operating days in 2002–2003, NMFS calculates that between 623 and 145 Pacific harbor seals may be subject to Level B harassment, as defined in 50 CFR 216.3. Although not likely to be present at the south VAFB harbor, NMFS is also authorizing the incidental harassment of 10 California sea lions, 10 northern elephant seals, and 5 northern fur seals and requires that marine mammal monitors note the presence and behavior of these marine mammal species in the project area.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals that haul out near the south VAFB harbor. The harbor seal haul-out sites near south VAFB harbor

are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals in the area to reproduce.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals, California sea lions, northern elephant seals, and northern fur seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out near south VAFB harbor are expected based on the relatively low levels of sound generated by the equipment to be used during Boeing's harbor activities (maximum level of 95 dB A-weighted within 50 ft (15.2 m)) and the relatively short time periods over which the project will take place (totaling approximately 83 days). However, Boeing expects that the harbor activities may cause disturbance reactions by some of the harbor seals hauled out on the adjacent beach and rocks. To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

- (1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling marine mammals at night.

- (2) Activities should be initiated before dusk.

- (3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while marine mammals are present.

- (4) If activities cease for longer than 30 minutes and marine mammals are in the area, start-up of activities will include a gradual increase in noise levels.

- (5) A qualified marine mammal observer will visually monitor marine mammals on beaches and on rocks for any flushing or other behaviors as a result of Boeing's activities.

- (6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks.

- (7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its application, Boeing provided a proposed monitoring plan

for assessing impacts to marine mammals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for marine mammals during all harbor activities. During nighttime activities, the harbor area will be lit and the monitor will use a night vision scope. Monitoring activities will consist of:

- (1) Conducting baseline observation of marine mammals in the project area prior to initiating project activities.

- (2) Conducting and recording observations on harbor seals in the vicinity of the harbor for the duration of activities occurring when tides are low enough for harbor seals to haul out (+ 2 ft. or less).

- (3) Conducting post-construction observations of marine mammal haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

As required by the MMPA, this monitoring plan will be subject to a review by technical experts prior to formal acceptance by NMFS.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of marine mammal behavioral observations, and estimates of the amount and nature of all takes of marine mammals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from these activities, this will be reported to NMFS immediately.

Consultation

Boeing has not requested the take of any listed species nor is any take of listed species expected. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

Although sea otters are not within the jurisdiction of NMFS, VAFB formally consulted with FWS in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was written and Incidental Take Statement issued in August 2001. Southern sea otters were discussed in these documents and FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during

dredging. In addition, the FWS noted that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities.

NEPA

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996), the content and analysis of Boeing's request for an IHA, and the Final EA for Harbor Activities Associated with the Delta IV Program at VAFB (ENSRI 2001) that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on analysis of all relevant environmental documents, this action is exempted from further environmental review and meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216-6.

Determinations

NMFS has determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging, will result, at worst, in a temporary modification in behavior by Pacific harbor seals. California sea lions, northern elephant seals, and northern fur seals, while not likely to occur in the project area, may potentially experience the same temporary modification in behavior if they wander into the project area. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since pinniped species haul out in such small numbers near the site (maximum number of Pacific harbor seals hauled out in one day estimated at 30 seals). The effects of the harbor activities are expected to be limited to short-term and localized behavioral changes. Therefore, NMFS concludes that the effects of the planned activities will have no more than a negligible impact on marine mammals.

Due to the localized nature of these activities, the number of potential takings by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels and will be entirely avoided through the incorporation of appropriate mitigation measures. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

In summary, NMFS has determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, northern elephant seals, and northern fur seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Authorization

NMFS has issued an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south Vandenberg Air Force Base, CA, (VAFB) over a 1-year period. The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 15, 2002.

David Cottingham,

Deputy Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-13020 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051602E]

Endangered Species; File No. 1346

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Thomas McCormick (Principal Investigator), Channel Islands Marine Resource Institute (CIMRI), P.O. Box 1627, Port Hueneme, California 93044, has been issued a permit to take white abalone (*Haliotis sorenseni*) for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review

upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Jennifer Skidmore (301)713-2289.

SUPPLEMENTARY INFORMATION: On August 31, 2001, notice was published in the **Federal Register** (66 FR 45971) that a request for a scientific research permit to take species listed above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The Holder was issued five-year permit to maintain captive bred white abalone for scientific research and enhancement at the CIMRI Hatchery. Research Activities include feeding studies, propagation studies and studies identified as goals for the long term recovery of the white abalone. The action only covers the propagation of animals collected before June 28, 2001.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 17, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-13019 Filed 5-22-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 020515123-2123-01]

RIN 0660-XX15

Notice, Public Safety Communications Interoperability Summit

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) and the Public Safety Wireless Network (PSWN) Program will co-host a two-day summit on Current and Emerging Solutions to Public Safety Communications Interoperability, on June 11–12, 2002. The summit will be open to the public. The purpose of the interoperability summit is to educate the public about current and emerging technologies that will help to address wireless communications interoperability challenges faced by public safety land mobile radio communications systems.

DATES: The Interoperability Summit will be held from 7 a.m.–4 p.m. on Tuesday, June 11, 2002, and from 7 a.m.–3:30 p.m. on Wednesday, June 12, 2002.

ADDRESSES: The meetings will take place at the Ronald Reagan International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. Meetings on both days are open to the public. Seating is limited and is available on a first-come, first-served basis. For updated information, a copy of the agenda and audio webcasting information, please refer to NTIA's webpage at <<http://www.ntia.doc.gov>> or PSWN's webpage at <<http://www.pswn.gov>>. Directions to the Ronald Reagan International Trade Center and meeting room locations can also be accessed through the Trade Center's webpage at <<http://www.itcdc.com>>.

FOR FURTHER INFORMATION CONTACT: Derrick Owens, Office of Spectrum Management, NTIA, telephone (202) 482–1920, or electronic mail: <dowens@ntia.doc.gov>; or Richard Orsulak, Public Safety Program, NTIA, telephone (202) 501–5487, or electronic mail: <rorsulak@ntia.doc.gov>. Media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: NTIA serves as the principal adviser to the President on telecommunications policies as they pertain to the Nation's technological and economic advancement. NTIA is the primary Executive Branch agency responsible for developing and articulating domestic and international telecommunications policies. NTIA also manages use of the radio frequency spectrum by all federal agencies. PSWN is a jointly sponsored initiative which is comprised of the Department of Justice and Department of the Treasury to specifically addresses public safety wireless communications interoperability. Federal, State and local government agencies are working to improve their ability to share

information and to use current and emerging technology to ensure that they are better prepared for emergency response, regardless of the type of incident. Furthermore, government leaders are being challenged to better understand their current security and emergency response capabilities and, to implement services and technologies to improve emergency response, ensuring citizen safety during a time of increased national threat.

The Interoperability Summit will provide the platform for attendees to share information addressing current and emerging technology solutions, implementation, lessons learned, and current funding activities. The information will focus on technical solutions, but will be presented in an easy to understand format for attendees. Manufacturers of land mobile radio equipment and commercial providers of other wireless communications technologies will also have an opportunity to brief attendees of their interoperability products, the status of their research and development activities, and compliance with published standards. A Federal Business Opportunities Notice will be published and vendors will be accepted on a first-come, first-served basis. Vendors desiring to send a representative to participate in the presentations and/or the tabletop exhibits should review the Federal Business Opportunities Notice or make their request via electronic mail (preferred), by fax, or in writing to: Mrs. Carole Kirsch, PSWN Program, P.O. Box 3926, Fairfax, VA 22038, (electronic mail: <cakirsch@earthlink.net>, telephone: (703) 279–2006, facsimile: (703) 279–2032).

The audio of the Interoperability Summit will be webcast over the Internet and made available from NTIA's webpage (<<http://www.ntia.doc.gov>>) during the two-day event.

Public Participation

These meetings will be open to the public and will be physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Derrick Owens or Richard Orsulak at least three (3) days prior to the meeting via the contact information provided above. All persons entering the Ronald Reagan International Trade Center must go through the security screening, therefore, please have photo identification available and/or a U.S. Government building pass, if applicable.

Dated: May 20, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–12937 Filed 5–22–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.363A]

Office of Elementary and Secondary Education, School Leadership Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The School Leadership Program is designed to assist high-need local educational agencies (LEAs) in the development, enhancement, or expansion of innovative programs to recruit, train and mentor principals (including assistant principals) to serve in high-need schools.

For FY 2002, the competition focuses on projects designed to meet the priority that appears in the “Requirements for FY 2002 Competition: Competitive Preference” section of this notice.

Eligible Applicants: High-need LEAs, consortia of high-need LEAs, or partnerships that consist of at least one high-need LEA and at least one nonprofit organization or institution of higher education. See the “Requirements for FY 2002 Competition: Eligibility” section of this notice for the definition of high-need LEA.

Applications Available: May 23, 2002.

Deadline for Transmittal of Applications: July 8, 2002.

Deadline for Intergovernmental Review: September 5, 2002.

Estimated Available Funds:

\$10,000,000 for the first 12 months of the 36-month project period. Funding for the second and third 12-month project periods is subject to the availability of funds and to a grantee's meeting the requirements for receipt of continuation awards contained in 34 CFR 75.253.

Estimated Range of Awards:

\$150,000–\$750,000.

Estimated Average Size of Awards:

\$450,000.

Estimated Number of Awards: 22.

Note: The Department is not bound by any estimates in this notice. The Administration has not requested funding for this program for FY 2003.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) The special rules announced in this notice.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 50 pages, using the following standards:

- A page is 8.5" x 11", on one side only, with 1" margins at the top, bottom and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references and captions, as well as all text in charts, tables, figures and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Standard Form 424; the project abstract; the budget section, including the narrative budget justification; the assurances and certifications; or the resumes, bibliography, or letters of support.

Our reviewers will not read any pages of your applications that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

SUPPLEMENTARY INFORMATION: Research has shown that what principals do on a daily basis makes a difference in how well students learn. Principals influence teaching and classroom practice through such activities as formulating school goals, setting and communicating high achievement expectations, organizing resources for instruction, supervising and evaluating teachers' performance, and monitoring student progress. The primary responsibility of the principal is to create an environment that will enable all students to achieve.

It is clear that strong leadership is essential for effective school reform. However, fewer and fewer eligible candidates appear willing to accept the role of school administrator. Two hundred superintendents surveyed by Education Research Service in 1998 reported difficulties filling principal vacancies in their districts. The challenge does not rest with recruiting and training future principals. Attention must also focus on providing professional development to current administrators who, according to a 1997 report by the National Center for Education Statistics, are on average 48 years old and nearly a decade past their original training.

In this regard, section 2151(b) of Title II, Part A of the Elementary and

Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001, authorizes a new competitive grant program to assist high-need LEAs in recruiting, training and retaining principals (including assistant principals). The School Leadership program will fund applicants that effectively address the competitive priority and selection criteria while demonstrating to the satisfaction of reviewers that receipt of a grant award will enable them to do one or both of the following:

- (1) Hire, train, and mentor highly qualified individuals to become principals (and assistant principals) in high-need schools.
- (2) Provide current principals (and assistant principals) who serve in high-need school districts with sustained professional development that is standards-focused and job-embedded.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules, including competitive preferences. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These requirements will apply to the FY 2002 grant competition only.

Requirements for FY 2002 Competition

Selection Criteria. The Secretary uses the following criteria to evaluate an application. The maximum score for each criterion is indicated in parenthesis.

(a) *Need for project.* (15 points)

In determining the need for the proposed project, the Secretary considers:

- (i) The magnitude of the need for recruiting and training highly qualified principals by the proposed project.
- (ii) The extent to which the proposed project will prepare personnel to be highly qualified principals in which shortages have been demonstrated.

(b) *Quality of project design.* (25 points)

In determining the quality of project design of the proposed project, the Secretary considers:

- (i) The extent to which the goals, objectives, and outcomes to be achieved

by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address the need to improve student achievement through effective school leadership.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training for principals in instructional leadership, community leadership, and systems management.

(iv) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(c) *Quality of project services.* (25 points)

In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the principal candidates or current principals to be served or both.

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in school leadership.

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(iv) The extent to which the services to be provided by the proposed project are focused on high-need schools.

(d) *Quality of project personnel.* (10 points)

In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(e) *Adequacy of resources.* (5 points)
In determining the adequacy of

resources for the proposed project, the Secretary considers the following:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the management plan.* (10 points)

In determining the quality of the management plan for the proposed project, the Secretary considers:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (10 points) In determining the quality of the evaluation, the Secretary considers:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Competitive Preference. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this competitive preference. The priority points are in addition to any points an application earns under the selection criteria for the program.

To promote sustained gains in student achievement, principals today need to be strong leaders and managers. Principals must effectively serve as leaders of the instructional school staff; leaders of the school, family, and business communities; and managers of the human, financial, and material resources of the school. In addition, the very purpose of this program is to help

those schools and LEAs most in need of improved school leadership.

Therefore, a competitive preference is awarded to applications whose projects would both—

(1) Provide comprehensive and sustained training or professional development to current or prospective principals or assistant principals in each of the following three key areas: Instructional leadership, community leadership, and systems management; and,

(2) Support a district-wide effort to improve the academic achievement of students attending schools that are most in need of strong school leaders. For purposes of this program, schools most in need of strong leaders are “high-need schools” as defined in section 2312(3) of the ESEA, i.e., a school that—

(A) Is either located in an area in which the percentage of students from families with incomes below the poverty line is 30 percent or more; or

(B)(i) Is located in an area with a high percentage of out-of-field teachers, as defined in section 2102 of the ESEA;

(ii) Is within the top quartile of elementary schools and secondary schools statewide, as ranked by the number of unfilled, available teacher positions at the school;

(iii) Is located in an area in which there is a high teacher turnover rate; or

(iv) Is located in an area in which there is a high percentage of teachers who are not certified or licensed.

Eligibility. An eligible application must propose a project directly benefits one or more named “high-need LEA(s)”. If the applicant is not the LEA(s), the application must contain a letter of support from the LEA(s). As this term is defined in section 2102 (3) of the ESEA, a high-need LEA is an LEA—

1. (a) That serves not fewer than 10,000 children from families with incomes below the poverty line, or (b) for which not less than 20 percent of the children in the area served by the LEA are from families with incomes below the poverty line; and

2. For which there is (a) a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach, or (b) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Applicants will need to include information in their applications that demonstrates that they, or the LEA(s) with which they will work, meet this definition.

Note: For purposes of the four elements of this statutory definition of “high-need LEA”:

1.a. The total number of children in poverty, as referenced above, can be found on

the Census Bureau Web site at: <http://www.census.gov/housing/saie/sd97/>. This site reports the number of children in poverty for every school district in the United States. See the file for your State's data, and find your LEA. The sixth column provides the number of children in poverty.

1.b. LEA poverty rates referenced in 1(b) can be accessed on the Department's Web site at the following address: www.ed.gov/offices/OESE/reap.html. See at this address “Instructions and Tools for Submitting Data,” and find “Its Own State Spreadsheet.” Column 11 identifies the percentage of an LEA's children from families below the poverty line. These poverty rates are available for LEAs that are included in the National Center for Education Statistics (NCES) Common Core of Data (CCD).

An LEA not included in the CCD must provide other data, such as the adjusted poverty data that its State used to make its Title I allocations, to demonstrate its eligibility.

2.a. The Department does not have available to it suitable data with which to define a “high percentage” of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach. Therefore, to be eligible to receive an award, LEAs unable to meet the definition immediately below for “high percentage of teachers with emergency, provisional, or temporary certification or licensing” will need to demonstrate to the Department's satisfaction that they have a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach. The Department will review this aspect of the applications on a case-by-case basis.

2.b. The best data available to the Department on the percentage of teachers with emergency, provisional, or temporary certification or licensing comes from the reports on the quality of teacher preparation that States provided to the Department in October 2001 under section 207 of the Higher Education Act. Specifically, States provided the percentage of teachers in their LEAs teaching on waivers, both on a statewide basis and in high-poverty LEAs. Based on data from these reports, the national average of teachers on waivers in high-poverty LEAs is approximately 11 percent. The Secretary has determined that it is reasonable to use a percentage that meets or exceeds 11 percent in defining high-need LEA in Title II of the ESEA (under which this program is authorized) to reflect a “high percentage” of teachers teaching with emergency, provisional, or temporary certification or licensing.

Services for Private School Principals and Assistant Principals

The uniform provisions in Title IX, Part E of the ESEA apply to this program. Among other things, this means that an LEA receiving financial assistance under the School Leadership Program must, after timely and meaningful consultation with private school officials, provide to private school staff professional development

that is equitable to professional development provided with program funds to public school principals and assistant principals (or other public school staff whom the project serves). See section 9501 of the ESEA.

Limitation on Indirect Cost

The success of the School Leadership Program will depend upon how well grantees produce highly qualified principals and assistant principals who will work and stay in high-need schools. If the program is to achieve its purposes, we need to ensure that the \$10 million appropriation is used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that grant recipients may use to reimburse themselves for the "indirect costs" of program activities. Therefore, the Secretary has decided to establish a reasonable limit of eight percent on the indirect cost rate that all program recipients may charge to funds provided under this program.

The School Leadership Program does not fund activities that are strictly "educational training projects" within the meaning of section 75.562 of EDGAR, to which this eight-percent limitation already expressly applies. However, for reasons we have provided in a limited number of other competitive grant programs that focus on improving teacher quality or helping students in high-need schools achieve academically, we believe that a similar limitation on a recipient's indirect costs is necessary here to ensure that program funds are used to secure the school leaders that Congress had intended. See, e.g., (1) the analysis of EDGAR for proposed 34 CFR 611.61 that governs the Teacher Quality Enhancement Grant programs, authorized by Title II, Part A of the Higher Education Act (65 FR 6936, 6940 (February 11, 2000)); and (2) requirements for the FY 2001 grants competition under the Transition to Teaching program authorized in the FY 2001 Department of Education Appropriations Act, Pub. L. 106-554 (66 FR 19673, 19676-77 (April 16, 2002)).

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/about/ordering.jsp>.

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.363A.

For Technical Assistance Contact: Susan Toy, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E224, Washington, DC 20202-6140. Telephone: (202) 260-0995 or via Internet: Susan.Toy@ed.gov.

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Program Authority: 20 U.S.C 6651(b).

Dated: May 17, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02-13022 Filed 5-22-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330C]

Office of Elementary and Secondary Education—Advanced Placement Incentive (API) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002 for the API Program

Purpose of Program: The API program, funded under section 1705 of Title I, Part G of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), awards competitive grants designed to increase the successful participation of low-income students in pre-advanced placement and

advanced placement courses and tests. Through increased access to and participation in pre-advanced placement and advanced placement courses and tests, the program provides greater opportunities for low-income students to achieve to high standards in English, mathematics, science, and other core subjects. Additional long-term goals of the program are to demonstrate that larger and more diverse groups of students can participate and succeed in advanced placement programs and to increase the numbers of low-income and other disadvantaged students who receive baccalaureate and advanced degrees.

Eligible Applicants: (a) State educational agencies (SEAs); (b) local educational agencies (LEAs); or (c) national nonprofit educational entities with expertise in advanced placement services. In the case of an eligible entity that is an SEA, the SEA may use API grant funds to award subgrants to LEAs to enable those LEAs to carry out activities authorized under this program.

Note: The Bureau of Indian Affairs is considered an SEA for purposes of this program.

Applications Available: May 23, 2002.

Deadline for Transmittal of Applications: July 8, 2002.

Deadline for Intergovernmental Review: September 5, 2002.

Estimated Available Funds: Approximately \$2,000,000.

Note: In accordance with statutory requirements, this amount is based on the amount of funds the Secretary estimates will be available after the Department has awarded grants under the Advanced Placement Test Fee program competition, which is being announced separately under CFDA No. 84.330B.

Estimated Range of Awards: \$100,000 to \$600,000 per year.

Estimated Average Size of Awards: \$350,000 per year.

Estimated Number of Awards: 5-15.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for the API program to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this

e-mail notification be sent no later than June 24, 2002. The e-mail notification should be sent to Ms. Madeline Baggett at madeline.baggett@ed.gov. Applicants that do not provide this e-mail notification may still apply for funding.

SUPPLEMENTARY INFORMATION: The API program promotes greater access to, and participation in, advanced placement courses and tests for low-income and other disadvantaged students. The API program is an important component of the Department's commitment to ensuring that "no child is left behind." In order to improve academic achievement for all students, the expectations for low-income children must be raised. Therefore, in addition to improving reading and mathematics achievement for all children in the early grades, the Secretary supports more rigorous middle and high school curricula in English, mathematics, science, and other core subjects. The development, enhancement, and expansion of advanced placement courses in all core subjects are key strategies for enabling low-income students to achieve to high academic standards.

Since the original authorization of the Advanced Placement program in 1998, funding for the program has increased from \$3 million to the current appropriation of \$22 million. In May 2001, low-income students took 114,112 advanced placement tests administered by the College Board, an 11 percent increase compared to 2000.

Nevertheless, there is still a significant gap between the level of participation of low-income students in advanced placement courses and tests and the level of participation of students from more affluent backgrounds. Further, recent data released by the College Board indicate a continued underrepresentation of minority students taking advanced placement exams generally, and of female students taking calculus and physics advanced placement exams.

The API program supports activities that enable greater numbers of low-income and other disadvantaged students to benefit from advanced placement courses and exams (ultimately increasing the likelihood that these students will receive college degrees) through increased access to, and participation in, pre-advanced placement and advanced placement courses. These courses will be developed, enhanced, and expanded in high-poverty schools, which are least likely to offer advanced placement courses. In addition, pre-advanced placement and advanced placement

teachers in the schools served will participate in sustained, high-quality professional development activities designed to: (1) Improve teacher content area knowledge; (2) increase utilization of research-based classroom practices that foster student achievement for low-income students; and (3) strengthen the alignment of pre-advanced placement and advanced placement curricula through vertical team training and other strategies. Applicants approved for funding under this program will be required to submit disaggregated data (by race, ethnicity, sex, English proficiency status, and socio-economic status) on individuals taking advanced placement courses and tests.

Allowable Activities: Under the API program, eligible entities implement programs designed to expand access for low-income individuals to advanced placement incentive programs through:

(1) Teacher training; (2) pre-advanced placement course development; (3) coordination and articulation between grade levels to prepare students for academic achievement in advanced placement courses; (4) providing books and supplies; (5) activities to increase the availability of, and participation in, on-line advanced placement courses; and (6) any other activity directly related to expanding access to and participation in advanced placement programs, particularly for low-income individuals.

Note: Applicants approved for funding under this competition are required to attend a two-day Project Directors' meeting in Washington, D.C. during the first year of the grant. The cost of attending this meeting may be paid from API program grant funds or State or local resources.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice might have applied to one or more of the priorities in this notice. Section 437(d)(1) of the General Education Administrative Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new or substantially revised program from this requirement. As this competition is the first API program competition under the newly reauthorized ESEA, it qualifies as a new competitive grants program and is exempt from notice and comment rulemaking. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forgo public comment. These rules will apply to the FY 2002 competition only.

Absolute Priorities: Under 34 CFR 75.105(c)(3), the Secretary is establishing three separate absolute priorities as described below. We have chosen these priorities from the authorized activities and priorities specified in the authorizing statute for this program (see sections 1705(c) and (d) of Title 1, Part G of the ESEA). To implement the priorities, the Secretary will fund under this competition only applications that meet all three absolute priorities, except that priority (b) below applies only to eligible applicants that are LEAs.

(a) The Secretary gives an absolute priority to applications that demonstrate an intent to carry out activities that target schools, or LEAs serving schools, with a high concentration of low-income students. For a definition of *high concentration of low-income students*, see the Definitions section of this notice.

(b) For eligible applicants that are LEAs, the Secretary gives an absolute priority to applications that assure that the LEA serves schools with a high concentration of low-income students. For a definition of *high concentration of low-income students*, see the Definitions section of this notice.

(c) The Secretary gives an absolute priority to applications that propose to develop, enhance, or expand pre-advanced placement courses in English, mathematics, science, and other core academic areas at the middle or high school level. Proposals may include activities designed to develop, enhance, or expand advanced placement courses in conjunction with pre-advanced placement courses. Effective projects must be designed to enable low-income students to enroll and succeed in advanced placement courses and taking tests in core academic areas, and must include activities for coordination of curriculum design and development between middle and high school teachers as well as teacher training activities necessary for effective implementation of such programs.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the Project Design* (20 points). The Secretary considers the quality of the project design of the proposed project. In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach for meeting the priority or priorities established for the competition.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) *Quality of Project Services* (20 points). The Secretary considers the quality of project services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practices.

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of Project Personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications

for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director;

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualification, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of Resources* (10 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(2) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(3) The potential for incorporation of project purposes, activities or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(f) *Quality of the Management Plan* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the Project Evaluation* (10 points). The Secretary considers the quality of the project evaluation. In determining the quality of the project evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(2) The extent to which the methods of evaluation will performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Priority Points: In accordance with statutory and regulatory requirements, the Secretary will award a total of twenty (20) additional priority points for applications based on the following criteria: (a) Pervasive need for access to API programs, including a focus on serving or otherwise addressing the needs of disadvantaged individuals—two (2) points;

(b) involvement of business and community organizations in the activities assisted—two (2) points; (c) availability of matching funds from State, local, or other sources to pay for the cost of activities to be assisted—two (2) points; (d) focus on developing or expanding advanced placement programs in the core academic areas of English, mathematics, or science—two (2) points; (e) intent to carry out activities to increase the availability of, and participation in, on-line advanced placement courses—two (2); and (f) serve schools where 75 percent or more of the students enrolled are from low-income families—ten (10) points.

These priorities are specified in the authorizing statute for the API Program. The priority points are in addition to any points the applicant earns under the selection criteria listed below. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99. Title I, Part G of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Pub. L. 107–110.

General Requirements: The following requirements must be met for any application submitted under this program: (a) The program narrative is limited to no more than 50 pages; (b) each “page” is 8.5” x 11” (on one side only) with one inch margins (top, bottom, and sides); and (c) all text in the application narrative is double-spaced (no more than three lines per vertical inch), including titles, headings, footnotes, quotations, captions, as well as all text in charts, tables, figures, and graphs. The page limit applies to the narrative section only. However, all of the application narrative must be included in the narrative section. If the narrative section of an application

exceeds the page limit, the application will not be reviewed.

Definitions

The following definitions and other provisions are taken from the API program authorizing statute, in Title I, Part G of the ESEA. They are repeated in this application notice for the convenience of the applicant.

As used in this section:

(a) The term *advanced placement test* means an advanced placement test administered by the College Board or approved by the Secretary.

Note: In addition to advanced placement tests administered by the College Board, the Department has approved advanced placement tests administered by the International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *high concentration of low-income students*, used with respect to a school, means a school that serves a student population at least 40 percent or more of whom are low-income individuals.

(c) The term *low-income individual* means an individual who is determined by a State educational agency or local educational agency to be a child, ages 5 through 17, from a low-income family, on the basis of data used by the Secretary to determine allocations under section 1124 of the ESEA, data on children eligible for free or reduced lunches under the National School Lunch Act, data on children in families receiving assistance under part A of title IV of the Social Security Act, or data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or through an alternate method that combines or extrapolates from those data.

Supplement, Not Supplant Rule

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW., Room 3C153, Washington, DC 20202-6140. Telephone (202) 260-2669. Internet address: Madeline.Baggett@ed.gov.

Individuals who use a telecommunications device for the deaf

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Program Authority: Pub. L. 107-110.

Dated: May 20, 2002.

Susan B. Neuman,
Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02-13023 Filed 5-22-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330B]

Office of Elementary and Secondary Education—Advanced Placement (AP) Test Fee Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The AP Test Fee program provides grants to States to enable them to pay advanced placement test fees on behalf of eligible low-income students who (1) are enrolled in an advanced placement course; and (2) plan to take an advanced placement exam. The program is designed to increase the number of low-income students who take advanced placement tests and receive scores for which

college academic credit is awarded. Further, the program seeks to increase the number of low-income students who achieve a baccalaureate or advanced degree. Therefore, through participation in this program, low-income students will have greater opportunities to achieve to higher standards in English, mathematics, science, and other core subjects.

Eligible Applicants: State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

Note: For purposes of this program, the Bureau of Indian Affairs is treated as an SEA.

Applications Available: May 23, 2002.

Deadline for Transmittal of

Applications: July 8, 2002.

Deadline for Transmittal Review: September 5, 2002.

Estimated Available Funds: Up to \$1,000,000.

Estimated Range of Awards: \$50,000 to \$400,000 per year.

Estimated Average Size of Awards: \$225,000 per year.

Estimated Number of Awards: 5-20.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for the AP Test Fee program to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than June 24, 2002. The e-mail notification should be sent to Ms. Madeline Baggett at madeline.baggett@ed.gov. Applicants that fail to provide this e-mail notification may still apply for funding.

Allowable Activities

States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test.

Priority

In accordance with statutory requirements, in allocating funds appropriated for Title I, Part G

Advanced Placement programs, the Department gives priority to funding proposals to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. To implement this priority, the Department intends to fund, at some level, all applications that meet the minimum Requirements for Approval of Applications as described in the application package.

Award Basis

In determining grant award amounts, the Department will consider, among other things, the number of children in the State eligible to be counted under section 1124(c) of Title I of the ESEA in relation to the number of such children so counted in all the States. Complete budget data must be submitted for each year of funding requested.

Applicable Regulations and Statute

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, and 99. Title I, Part G of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, Public Law 107-110.

The following definitions and other provisions are taken from the Advanced Placement Programs authorizing statute, in Title I, Part G of the ESEA. They are repeated in this application notice for the convenience of the applicant.

Definitions

As used in this section:

(a) The term *advanced placement test* means an advanced placement test administered by the College Board or approved by the Secretary of Education.

Note: In addition to advanced placement tests administered by the College Board, the Department has approved advanced placement tests administered by the International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *low-income individual* means an individual who is determined by an SEA or local educational agency to be a child, ages 5 through 17, from a low-income family, on the basis of data used by the Secretary to determine allocations under section 1124 of Title I of the ESEA, data on children in families receiving assistance under part A of title IV of the Social Security Act, or data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social

Security Act, or through an alternate method that combines or extrapolates from those data.

Information Dissemination

An SEA awarded a grant under the AP Test Fee program shall disseminate information regarding the availability of advanced placement test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors.

Supplement, Not Supplant Rule

Funds provided under this program must be used to supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW., Room 3E228, Washington, DC 20202-6140. Telephone (202) 260-2669. Internet address: Madeline.Baggett@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.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed under *For Applications or Information Contact*. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister. To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

Program Authority: Pub. L. 107-110.

Dated: May 20, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02-13024 Filed 5-22-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Submitted for OMB Review and Comment

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted the proposed collection of information described in this Notice to the Office of Management and Budget (OMB) for review and approval, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This electronic form will certify to DOE that respondents who wish to purchase DOE high risk personal property will comply with the International Traffic in Arms Regulations (ITAR), under 22 CFR 120 *et seq.*, Export Administration Regulations (EAR), under 15 CFR 730 *et seq.*; Office of Foreign Asset Controls (OFAC), under 31 CFR 500 *et seq.*; and the United States Customs Service rules and regulations.

DATES: Comments regarding this collection must be received on or before July 22, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the time period allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395-7318. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division [IM-11], Office of Records and Business Management, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, MD 20874-1290, and to Faye Zimmerman, Office of Resource Management, Office of Procurement and Assistance Management (ME-632), Room 4H-023, U.S. Department of Energy, Washington, DC 20585. Ms. Zimmerman will receive

requests for copies of this collection proposal.)

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No. 1910-New*; (2) *Package Title: End-User Certificate*; (3) *Type of Request: New Collection*; (4) *Purpose:* When acquiring High Risk Property from the Department of Energy, the End-Use Certificate (EUC) will be used to check respondents to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws and to advise recipients that when property is to be exported, they must comply with the International Traffic in Arms Regulations (ITAR), 22 CFR 120 *et seq.*; Export Administration Regulations (EAR), 15 CFR 730 *et seq.*; Office of Foreign Asset Controls (OFAC), 31 CFR 500 *et seq.*; and the United States Customs Service rules and regulations; (5) *Respondents:* 5,000 perspective purchasers; (6) *Estimated Number of Burden Hours:* 1,650.

Statutory Authority: Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. Section 3507(a).

Issued in Washington, DC on May 17, 2002.

Susan L. Frey,

*Director, Records Management Division,
Office of Records and Business Management,
Office of the Chief Information Officer.*

[FR Doc. 02-12977 Filed 5-22-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02-16-000]

Calpine Texas Pipeline, L.P.; Notice of Petition for Rate Approval

May 17, 2002.

Take notice that on May 2, 2002, Calpine Texas Pipeline, L.P. (Calpine) filed, pursuant to section 284.224(c)(7) and section 284.123(b)(1)(ii) of the Commission's regulations, a petition for rate approval, requesting that the Commission approve the following maximum rates for transportation under Section 311 of the Natural Gas Policy Act. Calpine proposes rates of \$0.0121/MMBtu for the Baytown System and \$0.0218/MMBtu for the Freestone System.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines

would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before May 29, 2002. 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. This petition for rate approval is 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. 02-12945 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2142-031]

FPL Energy Maine Hydro LLC; Notice Revising Processing Schedule and Issuing an Environmental Assessment

May 17, 2002.

On December 14, 2001, the Federal Energy Regulatory Commission (Commission) issued a Scoping Document 2 (SD2) for the Indian Pond Project (FERC No. 2142-031). The SD2 included a schedule for processing the application for a new license for the Project. The schedule estimated issuing a draft environmental assessment (EA) during the Spring-Summer 2002 and a final EA during the Fall-Winter 2002.

The Commission staff will issue one EA rather than issuing a draft and final

EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following milestones. Revisions to these milestones will be made when the Commission determines it is necessary to do so.

Environmental Assessment Fall—

Winter 2002

Order on License Decision Spring—
2003

Magalie R. Salas,

Secretary.

[FR Doc. 02-12943 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02-3-000]

Gulfstream Natural Gas System, L.L.C.; Notice of Filing

May 17, 2002.

On May 2, 2002, Gulfstream Natural Gas System, L.L.C. filed its initial standards of conduct under Part 161 of the Commission's regulations, 18 CFR Part 161.

Gulfstream Natural Gas System, L.L.C. states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding 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 or 385.214) All such motions to intervene or protest should be filed on or before (15 days after date of notice) 2002. 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. 02-12942 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2652-007]

PacifiCorp; Notice of Meeting to Discuss Section 10(j) and Endangered Species Act Issues

May 17, 2002.

a. *Date and Time of Meeting:* June 19, 2002; 10:00 a.m. Mountain Standard Time.

b. *Place:* Conference Call.

c. *FERC Contact:* Steve Hocking at steve.hocking@ferc.gov or (202) 219-2656.

d. *Purpose of Meeting:* Commission staff and the U.S. Fish and Wildlife Service will have a conference call to discuss the U.S. Department of the Interior's recommendation for water quality monitoring under Section 10(j) and any Endangered Species Act issues for the Bigfork Project, P-2652-007. The project is located in Bigfork, Montana.

e. *Proposed Agenda:* (1) Introduction, (2) Recognize Participants, (3) Meeting Procedures, (4) Section 10(j) Discussion on Water Quality Monitoring, (5) ESA Discussion, (6) Close Meeting.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to join the conference call. Please call Steve Hocking at (202) 219-2656 at least one day in advance for instructions on how to join the conference call.

Magalie R. Salas,
Secretary.

[FR Doc. 02-12944 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-114-001]

Tennessee Gas Pipeline Company; Notice of Technical Conference

May 17, 2002.

Take notice that a technical conference will be convened to address issues raised by the filing in the above reference proceeding. The technical

conference will be held on Monday June 24, 2002 at 1 p.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. 02-12947 Filed 05-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-3022-003, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 16 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cinergy Services, Inc.

[Docket No. ER01-3022-003]

Take notice that on May 10, 2002, Cinergy Services, Inc., as agent for PSI Energy, Inc. (PSI), tendered for filing a Second Revised executed Interconnection Agreement by and between Cinergy Services, Inc. (Cinergy) and Mirant Sugar Creek, LLC (Mirant).

The Second Revised executed Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of PSI, a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto.

Consistent with the Commission's April 10, 2002 Order in this Docket, Cinergy requests an effective date of September 8, 2001 for the Second Revised executed Interconnection Agreement. Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and Mirant.

Comment Date: May 31, 2002.

2. Select Energy New York, Inc.

[Docket No. ER02-556-001]

Take notice that on May 13, 2002, Select Energy New York, Inc. (SENY) tendered for filing with the Federal Energy Regulatory Commission (Commission), revisions to its Rate Schedule No. 1 in compliance with the Commission's letter order issued on February 11, 2002 in the above-captioned proceeding.

Comment Date: June 3, 2002.

3. Exelon Generation Company, LLC

[Docket No. ER02-1768-000]

Take notice that on May 8, 2002 Exelon Generation Company, LLC, tendered for filing a transaction agreement under its market-based rate wholesale power sales tariff under which it will provide Full Requirements Service to Fox Islands Electric Cooperative, Inc.

Comment Date: May 29, 2002.

4. New England Power Pool

[Docket No. ER02-1769-000]

Take notice that on May 8, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include the UBS AG, acting through its London Branch (UBS AG). The Participants Committee requests a May 8, 2002 effective date for the commencement of participation in NEPOOL by UBS AG.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: May 29, 2002.

5. Cinergy Services, Inc.

[Docket No. ER02-1770-000]

Take notice that on May 8, 2002, Cinergy Services, Inc. (Cinergy) on behalf of the Cincinnati Gas and Electric Company tendered for filing a Wholesale Market-Based Service Agreement under its Wholesale Market-Based Power Sales Standard Tariff, No. 9-MB (the Tariff) entered into with Ameren Energy, Inc. as agent for and on behalf of Union Electric company d/b/a AmerenUE and Ameren Energy Generating Company.

Cinergy and Ameren Energy, Inc. are requesting an effective date of May 1, 2002.

Comment Date: May 29, 2002.

6. Cinergy Services, Inc.

[Docket No. ER02-1771-000]

Take notice that on May 8, 2002, Cinergy Services, Inc. (Cinergy) and Energy USA—TPC Corp. filed a Notice of Cancellation of Service Agreement No. 267, under Cinergy Operating Companies, FERC Market-Based Power Sales, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of May 10, 2002.

Comment Date: May 29, 2002.

7. New York Independent System Operator, Inc.

[Docket No. ER02-1772-000]

Take notice that on May 8, 2002, the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to its Market Administration and Control Area Services Tariff that would improve the ability of its Balancing Market Evaluation to call on potential providers of Thirty-Minute Reserves. The NYISO has requested a waiver of the Commission's usual sixty-day notice period so that the proposed revisions may become effective on May 30, 2002.

The NYISO has mailed a copy of this compliance filing to all persons that have executed Service Agreements under the NYISO's Market Administration and Control Area Services Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: May 28, 2002.

8. Public Service Company of New Mexico

[Docket No. ER02-1773-000]

Take notice that on May 8, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed interconnection agreement, dated January 21, 2002, with Celerity Energy of New Mexico, LLC (Celerity), under the terms of PNM's Open Access Transmission Tariff. The interconnection agreement governs the interconnection of various back-up generators (facilities) located at various sites in the Albuquerque area and elsewhere in New Mexico, to the PNM distribution system, pursuant to which the energy generated by the facilities will be sold to PNM's Wholesale Merchant function (PNMM) for use as a peaking resource under a separate wholesale power sale agreement. PNM requests an effective date of January 21, 2002 for the interconnection agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Celerity, PNMM, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: May 29, 2002.

9. Energy Services Inc.

[Docket No. ER02-1774-000]

Take notice that on May 8, 2002, Energy Services Inc. filed a Notice of Cancellation of Electric Service Rate Schedule No. 1 to be effective no later than July 1, 2002.

Comment Date: May 29, 2002.

10. Consumers Energy Company

[Docket No. OA96-77-001]

Take notice that on May 13, 2002, Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission), the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the Commission's March 27, 2002 order issued in the above proceeding:

First Revised Sheet Nos. 38, 58, 59, 75 through 81, 84 through 89 and 115 and Second Revised Sheet Nos. 38, 58, 59, 86, 88 and 115.

All of the First Revised Sheets except for Nos. 87 and 89 are to become effective July 9, 1996; the rest of the sheets being filed are to become effective January 1, 1999. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: June 12, 2002.

Standard Paragraph

E. 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.

Magalie R. Salas,
Secretary.

[FR Doc. 02-12899 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER02-1173-000, ER00-2998-001, ER00-2999-001, ER00-3000-001, and ER00-3001-001]

Front Range Power Company, LLC; Notice of Issuance of Order

May 17, 2002.

Front Range Power Company, LLC (Front Range) submitted for filing a rate schedule and two long-term power purchase agreements with Colorado Public Service Company under which Front Range will engage in wholesale electric power and energy transactions at market-based rates and for the reassignment of transmission capacity. Front Range also requested waiver of various Commission regulations. In particular, Front Range requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Front Range.

On April 22, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-West, 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 Front Range should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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, Front Range 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 Front Range, 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 Front Range'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 28, 2002.

Copies of the full text of the Order are available from the Commission's Public

Reference Branch, 888 First Street, N.E., Washington, D.C. 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. 02-12941 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

May 16, 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.:* P-2177.

c. *Applicant:* Georgia Power Company.

d. *Name of Project:* Middle Chattahoochee Hydroelectric Project.

e. *Location:* On the Chattahoochee River, in Harris and Muscogee Counties, Georgia and Lee and Russell Counties, Alabama.

f. *Applicant Contact:* Chris M. Hobson, Vice President, Environmental Affairs, Georgia Power Company, 241 Ralph McGill Boulevard NE, Bin 10221, Atlanta, GA 30308.

g. *FERC Contact:* Ronald McKittrick, (770) 452-2272, E-mail: ronald.mckittrick@ferc.gov.

h. Georgia Power Company mailed a copy of the PDEA to interested parties on May 14, 2002. The Commission received a copy of the PDEA on May 15, 2002.

i. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the PDEA, and (2) comments on the PDEA and the Draft Application.

j. *Deadline for filing:* August 13, 2002. All comments on the PDEA and Draft Application should be sent to the addresses noted above in Item (f), with one copy filed with FERC at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory

Commission, 888 First Street, NE, Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments and preliminary recommendations, terms and conditions, and prescriptions 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. A copy of the application is on file with the Commission and is 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).

Georgia Power Company has mailed a copy of the Preliminary DEA and Draft Application to interested entities and parties. Copies of these documents are available for review at Georgia Power Company Relicensing Public Library, or by calling (404) 506-1357 or by e-mailing gmartin@southernco.com.

l. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02-12962 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01-10-000]

Standards of Conduct for Transmission Providers; Notice of Agenda for Technical Conference

May 17, 2002.

This notice provides additional information concerning the May 21, 2002 technical conference to be held in this docket to discuss the proposed revisions to the gas and electric standards of conduct governing transmission providers and their energy affiliates. See April 25, 2002 Notice of Technical Conference and Staff Analysis of the Major Issues Raised in the Comments. The conference will begin at

9:30 a.m. at the Commission's offices, 888 First Street NE., Washington, DC in the Commission's Meeting Room. All interested persons are invited to attend.

Tentative Agenda

This agenda has been organized to reflect the interests of those who expressed an interest in participating in the discussions. The topics that had the greatest interest have been placed first on the agenda.

Participation in the Discussions

Those who have contacted Commission staff about participating in the discussions will be seated in the Commission Meeting Room. See attachment to this Notice. Observers will be accommodated in the Commission Meeting Room on a space available basis, but seating will also be available in an overflow room, which will have a broadcast of the discussion. For those seated in the Commission Meeting Room, standing microphones will be available to enable those in the audience to participate in the discussion as issues arise. All visitors must check in at the First Street entrance. All visitors should have picture identification readily available to ensure a quick check-in.

Procedures To File Additional Comments

Interested persons may file additional comments on the issues discussed at the conference, or other matters relevant to this proceeding, including alternative proposals by June 14, 2002. Comments should include a one-page single spaced position summary. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and should refer to Docket No. RM01-10-000.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website (www.ferc.gov) and click on "Make an e-filing," and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of the comments.

User assistance for electronic filing is available at 202-208-0258 or by E-mail to efiling@ferc.gov. Comments should

not be submitted to the e-mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426 during regular business hours. Additionally, all comments may be viewed, printed or downloaded remotely via Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202-208-2222, or by E-mail to rimsmaster@ferc.gov.

Questions about the conference should be directed to: Demetra Anas, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202-208-0178, Demetra.Anas@ferc.gov.

Magalie R. Salas,
Secretary.

Standards of Conduct Affiliate Conference, May 21, 2002, Agenda

The times listed herein are approximate. The discussion of particular topics may take more or less time.

9:30-12:30 Discussion of Separation of Functions Issues

9:30-11:30 Separation of the transmission function from affiliated producers, gatherers, & LDCs.

- What is the impact on current operations of separating LDCs, producers, gatherers from the transmission function?
 - What are the one-time and annual costs associated with the separation of these function?
 - Are there other ways to achieve the purposes of the NOPR in requiring a separation of the transmission function?
- 11:30-12:30 Separation of the transmission function from the bundled sales function for retail native load.
- Where do the transmission and bundled sales functions currently fit in the corporate structure?
 - What is the impact of the proposed rule; can the costs and benefits of this proposed change be quantified?

12:30-1:30 Lunch Break

1:30-3:00 Information Disclosure Issues

- What is the impact of the automatic imputation rule on corporate governance?
- Would the no-conduit rule adequately achieve the Commission's purposes of avoiding preferential information flow?
- What are the types of operational and reliability information that transmission providers should be

allowed to share with their energy affiliates?

3:00-4:30 Discussion of the staff's proposed revisions to the regulatory text.

- Is the definition of an energy affiliate drafted appropriately to achieve the Commission's purposes?
- What alternative language should be considered for the definition or other provisions?

Discussion Participants

I. Separation of Transmission function from affiliated producers, gatherers & LDCs, representatives of:

British Petroleum-Amoco
Cinergy
CMS Energy Corp.
Dominion Resources Inc.
Duke Energy
Duke Energy Gas Transmission Co.
Dynegy
El Paso Corporation
El Paso Energy Partners
ExxonMobil
Independent Petroleum Association of America
Interstate Natural Gas Association of America
Lockheed Martin Missions System
Midstream Gas and Liquids, Williams Energy Services
National Fuel Gas Distribution Company
National Gas Supply Association
National Rural Electric Cooperatives
Nisource Energy Distribution Group
Questar Pipeline Company and Questar Gas Company
Shell Gas Transmission Co.

II. Separation of Transmission function from the bundled sales function for retail native load discussion, representatives of:
Electric Power Supply Association
Louisville Gas and Electric Company
National Association of State Utility Consumer Advocates
National Energy Marketers Association
National Rural Electric Cooperatives
Ontario Power Generators
Pinnacle West
Southern Companies
Transmission Access Policy Study Group

III. Information Disclosure Issues, Representatives of:

Ad Hoc Marketers
British Petroleum-Amoco
Duke Energy Co.
Duke Energy Gas Transmission Co.
El Paso Corporation
Entergy
Exxon-Mobil
Interstate Natural Gas Association of America
Midstream Gas and Liquids, Williams Energy Services

NISource
Natural Gas Supply Association
National Fuel Gas Supply Corporation
IV. Discussion of staff's proposed revisions to the regulatory text

AdHoc Marketers
Duke Energy Gas Transmission Co.
Dynegy Co.
Entergy Services, Inc.
ExxonMobil
IPAA
National Fuel Gas Supply Corporation
National Grid
National Association of State Utility Consumer Advocates
Independent Petroleum Association of America
Shell Gas Transmission

[FR Doc. 02-12946 Filed 5-22-02; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7216-6]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. Seq.*). 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 OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566-1672, or e-mail at Auby.susan@epa.gov, and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1847.02; Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994; in 40 CFR part 62, subpart FFF; was approved 03/04/2002; OMB No. 2060-0390; expires 03/31/2003.

EPA ICR No. 1363.11; Toxic Chemical Release Reporting Recordkeeping, Supplier Notification and Petitions

Under Section 313 of the Emergency Planning and Community Right-to-know Act (EPCRA); in 40 CFR part 372; was approved 03/07/2002; OMB No. 2070-0093; expires 01/31/2003.

EPA ICR No. 2067.01; Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium Under the Safe Drinking Water Act; was approved 04/11/2002; OMB No. 2040-0246; expires 07/31/2002.

EPA ICR No. 1506.09; NSPS Municipal Waste Combustors (MWC) for subpart Ea and subpart Eb; was approved 04/09/2002; OMB No. 2060-0210; expires 04/20/2005.

EPA ICR No. 1750.03; National Volatile Organic Compound Emission Standards for Architectural Coatings; was approved 04/16/2002; OMB No. 2060-0393; expires 04/20/2005.

EPA ICR No. 1637.05; General Conformity of Federal Actions to State Implementation Plan; in 40 CFR part 51, subpart W, and part 93, subpart B; was approved on 04/09/2002; OMB No. 2060-0279; expires 04/30/2005.

EPA ICR No. 1573.08; Part B Permit Application, Permit Modifications and Special Permits (Corrective Action Management Final Rule); was approved 03/18/2002; OMB No. 2050-0184; expires 03/31/2005.

EPA ICR No. 2013.01; Protection of Stratospheric Ozone: Request for Applications for Critical Use Exemptions from the Phaseout of Methyl Bromide; was approved 05/02/2002; OMB No. 2060-0482; expires 05/31/2005.

EPA ICR No. 0959.11; Facility Ground-water Monitoring Requirements; was approved 01/28/2002; OMB No. 2050-0033; expires 01/31/2005.

EPA ICR No. 0229.15; NPDES and Sewage Sludge Monitoring Reports; was approved 02/04/2002; OMB No. 2040-0004; expires 02/28/2005.

EPA ICR No. 1759.03; Worker Protection Standard Training and Notification; was approved 02/25/2002; OMB No. 2070-0148; expires 02/28/2005.

Short Term Extensions

EPA ICR No. 1601.04; Air Pollution Regulations for Outer Continental Shelf Activities; OMB No. 2060-0249; on 03/13/2002 OMB extended the expiration date through 05/31/2002.

EPA ICR No. 1755.05; Regulatory Reinvention Pilot Projects Under Project XL; Pre-Treatment Program; OMB No. 2010-0026; on 02/26/2002 OMB extended the expiration date through 05/31/2002.

EPA ICR No. 0277.11; Application for New or Amended Pesticide Registration;

OMB No. 2070-0060; on 04/20/2002 OMB extended the expiration date through 05/31/2002.

Notice of Change

EPA ICR No. 1888.01; National Roster for Environmental Dispute Resolution and Consensus-Building Professionals; OMB No. 2010-0030; on 03/11/2002 OMB changed the expiration date to 03/31/2002.

Comment Filed

EPA ICR No. 2029.01; National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing (40 CFR Part 63, Subpart LLLLL) Proposed Rule; on 01/03/2002 OMB filed comment.

Dated: May 13, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-12967 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7216-9]

Process for Designing a Watershed Initiative

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice solicits comments and suggestions from stakeholders and other interested parties on the potential design of EPA's new Watershed Initiative. The Agency is specifically seeking ideas and possible approaches to the nomination and selection processes. On January 25, 2002, EPA announced a proposal to include \$21 million in its fiscal year 2003 budget for the new Watershed Initiative. Pending appropriations for this purpose, EPA will call for nominations and select up to 20 watershed organizations to receive grants to support innovative watershed based approaches to preventing, reducing, and eliminating water pollution. The Initiative will also support local communities in their efforts to expand and improve existing protection measures with tools, training, and technical assistance, and provide for ten Federal liaison positions. The primary component of the Initiative will be in the form of a competitive grant program. In addition, throughout the upcoming months, EPA will be working cooperatively with the States, Tribes, local governments, and community groups to develop the proposed program.

DATES: Comments, identified by the document control number W-02-05 must be received no later than July 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in section I of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Carol Peterson, Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds (4501T), 1200 Pennsylvania Ave. NW, Washington, DC 20460. Telephone: 202-566-1304; e-mail: peterson.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to You?

You may be interested in this notice if you are involved in water quality, aquatic habitat, and sustainable land management issues at the Regional, State, Tribal, local, or community level. This notice is intended to solicit ideas and comments from an array of organizations and individuals across the country who have an interest in achieving clean and healthy watersheds. Interested individuals and organizations may include farmers, private landowners, commercial businesses, watershed and environmental interest groups, academicians, community leaders, county/city planners, commissioners, engineers, recreational water users, and members of the general public. This list is not intended to be exhaustive, nor is it intended to exclude entities that may be ineligible for Watershed grants, but rather provides a guide for readers. To determine whether you, your company or organization may be interested in responding to this notice, you should carefully examine its contents. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA home page at the **Federal Register** <http://www.epa.gov/fedrgstr/>, or on EPA's watershed homepage at <http://www.epa.gov/owow/watershed>.

2. *In person.* The complete administrative record for this action has been established under docket number W-02-05 and includes supporting

documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The records are available for inspection and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EPA, East Tower Basement, 401 M Street, SW, Washington, DC. For access to docket materials, please call (202) 260-3027 to schedule an appointment.

C. How and To Whom Do I Submit Comments?

EPA invites you to provide your views on those items outlined in *Section IV, Design of the Watershed Initiative*, approaches it has not considered, the potential impacts of the various options (including possible unintended consequences), and any other information that you would like the Agency to consider. You may submit comments by mail, in person, or electronically:

1. *By mail.* Submit written comments on this notice to: Comment Clerk for the Watershed Initiative Competitive Grant program, Water Docket (W-02-05), Environmental Protection Agency, Ariel Rios Bldg. 1200 Pennsylvania Ave. NW, Washington, DC 20460. The Document Control Office telephone number is 202-260-3027. To ensure proper identification of your comments, include in the subject line the docket control number, together with the name, date and **Federal Register** citation of this notice.

2. *In person.* Deliver written comments to EPA's Water Docket located in Room EB-57 (East Tower Basement), 401 M Street, SW, Washington, DC 20460.

3. *Electronically.* Submit your comments electronically to: ow-docket@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect or ASCII file format sent or delivered to the addresses above. All comments and data in electronic form must be identified by the docket control number W-02-05. Electronic comments on this notice may also be filed online at many Federal Depository Libraries. No confidential business information should be sent via e-mail.

II. Authority

EPA expects to award these grants under the authority of section 104(b)(3) of the Clean Water Act (CWA) which authorizes grants to conduct and

promote the coordination and acceleration of research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. EPA is also considering awarding grants under the authority in the Clean Water Act for Wet Weather Watershed Pilot Projects (33 U.S.C. 1274) or National Estuary Program projects (33 U.S.C. 1330).

III. Background

A. Introduction

Americans depend on clean water to drink, manufacture their products, irrigate their crops, and support a healthy habitat for wildlife. Water resources also provide opportunities for recreation, such as fishing, boating and swimming. Wetlands afford protection from floods, filter pollutants, and are home to a wide diversity of plants and animals. Estuaries serve as both birthplace and nursery for many species of fish and shellfish. Today, a majority of watersheds have water quality problems such as habitat loss, nutrient enrichment, pathogens, toxic chemicals, and invasive species. These problems continue to impair watersheds nationwide and prohibit the attainment of State/Tribal water quality standards and other water quality goals. The problems are complex and vary from region to region. Governments working alone can not solve all of them.

State and Federal water protection programs along with volunteer and private sector efforts, have been successful in reversing or preventing damage to the nation's waters over the past 30 years. Nevertheless, nearly 40 percent of the nation's waters that have been assessed are still not considered safe for swimming and fishing, or are impaired in other ways. Further, many lakes, rivers, streams, wetlands, and estuaries have yet to be adequately assessed. The nation remains far from realizing the goals of the Clean Water Act.

B. The Watershed Approach

To address water resource problems more effectively, water resource managers at all levels have been adopting a more comprehensive approach—one that considers all threats to a watershed. A watershed can be large or small. It can encompass the entire Mississippi River basin or a small stream in western Georgia. The "watershed approach" addresses natural resource issues that cross geographic, jurisdictional and political boundaries. This approach recognizes needs for

water supply, water quality, flood control, navigation, hydropower generation, fisheries, biodiversity, habitat preservation and recreation—and it recognizes that these needs often compete. It establishes local priorities in the context of national goals, coordinates public and private actions, encourages partnerships to affect change, and enlists the support and knowledge base of the public at the local level.

Effective solutions to restoring water quality across the country will typically require cooperative efforts. Over the years, many communities around the country have joined forces to protect their watersheds, often using innovative and novel approaches that are geared toward solving the problems that make sense for their locality. In recent years, governments, non-profit organizations, businesses, and citizens have employed watershed based approaches to refocus their efforts to protect and restore the nation's waters. These refocused efforts have brought positive results and attainment of State/Tribal water quality standards in some areas.

C. The Watershed Initiative

The Watershed Initiative, if approved by Congress, would build on the watershed approach, encouraging innovative approaches for attaining water quality standards and improving water resource protection and restoration. It would also further EPA's goal to meet the mandate of the Clean Water Act. The Initiative will focus on highly valued watershed resources such as those that support human health, wildlife diversity, ecosystem integrity, economic stability, recreational opportunity, and natural or cultural significance.

The Administration has requested an additional \$21 million in EPA's 2003 budget to spearhead this effort. The investment will capitalize on lessons learned from current protection efforts and build upon proven successful approaches to protect valued watershed resources. The Initiative will have several kinds of assistance. One part would direct cooperative agreements and demonstration funds to up to 20 watersheds. The grants would range from \$300,000 to \$1,300,000, depending on the amount requested and the overall size and need of the project.

A smaller portion of the funds could be used to respond to the recommendations of last year's National Watershed Forum (<http://www.epa.gov/owow/forum>), by supporting the development of tools, training, data and information, and technical assistance that can be provided to all watershed

activities across the country, including projects which are nominated for selection under this Initiative but are not selected. The Initiative will also establish ten Federal liaison positions in EPA's Regional Offices. These watershed liaisons will serve as a vital link between the Federal government and the groups funded under the Initiative. This liaison will work to support cooperation and communication among all affected stakeholders of the project.

This notice only focuses on the competitive grant component of the Watershed Initiative described in section IV below.

D. Eligibility

If EPA awards these grants under section 104(b)(3) of the Clean Water Act, the funds may be used to conduct and promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. Eligible activities under Wet Weather Watershed Pilot Project grants include pilot projects relating to watershed management of wet weather discharges and storm water best management practices. If EPA awards Watershed Initiative grants under the authority for National Estuary Program grants (section 320 of the Clean Water Act), the funds may be used for the development and implementation of a comprehensive management plan that has been developed under section 320.

E. Tentative Schedule

EPA has begun the process of devising a strategy to implement the Initiative. Work is underway both within EPA and with outside parties to solicit ideas. Over the next few months, the Agency will consult with Congress, Governors, States, Tribes, local governments, and community groups to seek their help in developing the program.

Plans are to complete the design of the program this summer and to call for nominations of projects soon thereafter. The Agency wants to make its selections as soon as possible after the fiscal year 2003 appropriation act is enacted. Project selections could be made as early as December 2002 and implementation could be underway by next summer.

IV. Design of the Watershed Initiative—the Nomination and Selection Process

The Agency is interested in the public's views on several key aspects of the Initiative.

Who Is Eligible?

EPA will award grants through a competitive process. Under section 104(b)(3) of the CWA, the following entities are eligible to receive grants: State and Tribal water pollution control agencies, interstate or intertribal agencies, other public or non-profit private agencies, institutions, organizations, and individuals. Grants authorized under section 320 of the CWA (National Estuary Program Grants) may be awarded to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals. For-profit entities are not eligible for grants under either section 104(b)(3) or 320 of the CWA. There is no limitation on the types of entities eligible for Wet Weather Watershed Pilot Project grants. The Agency invites the public to address whether the Initiative should be limited to certain groups and why.

How Will a Watershed Be Selected?

The Agency is interested in the views of interested parties on the selection process. One option is for the Governors or Tribal Leaders to nominate watershed projects to EPA. Under this option candidates representing a watershed that is wholly within a State's or Tribe's boundaries submit their proposals to the Governor or Tribal Leader of that State or Tribe, who in turn, would formally nominate selected watersheds to the EPA Administrator. This process is used by the Agency's National Estuary Program (NEP). Nominations for NEP funding can only be made by a Governor or by the EPA Administrator, on her own initiative. The Governor /Tribal Leader could serve as a screening step to the selection process and nominate only those watersheds in its State/Tribal land that most merit Federal funding. If the Governors or Tribal Leaders make the nominations, should they be restricted to a limited number of nominations?

Other programs take somewhat different approaches. For instance, to receive funding under EPA's Brownfields Showcase Communities Program, nominations are solicited through a notice in the **Federal Register** and are accepted from any party but must be submitted in partnership with a government entity. Other government granting programs, such as the Large-scale Watershed Restoration Program (LWRP), and the Community-Based Restoration Program (CBRP), do not require a State role *per se*. Nominations

for these programs are submitted directly to the U.S. Forest Service and the National Marine Fisheries Service, respectively.

What About Regional Watersheds That Include More Than One State or Tribe?

Some of the most significant management and environmental challenges the nation faces involve water bodies that straddle State and Tribal boundaries. If Governors and Tribal Leaders nominate watershed projects that are wholly within their jurisdiction as described above, should interstate or inter-tribal watershed projects go through a different nomination process? EPA could require that nominations for these trans-boundary watershed projects be screened by EPA's Regional Administrators or be submitted directly to the Administrator. In light of limited time to prepare nominations, and the increased difficulty of developing the proposal for multi-jurisdictional projects, would requiring Governor or Tribal Leader level nomination put these larger projects at a disadvantage?

What Should Be the Criteria for Selecting a Watershed?

EPA is requesting comment on the criteria it should use to select watershed projects for funding. Below is a list of criteria that are utilized in various other Federal programs. EPA would like comments on the appropriateness of each criterion to this Initiative, and which criteria (and/or others not on the list) should be used in the selection process.

1. *Value of the Resource at Risk and Extent of Impairment or Threat.* The cornerstone of the Watershed Initiative is to foster the protection, preservation, and restoration of the country's water bodies. To what degree should successful candidates demonstrate that the watershed provides a high value of services to human health, economic stability, ecosystem integrity, recreational opportunity, natural or cultural significance or any other important services? For water bodies which are impaired, how should the nature, extent, and severity of the impairment be weighed? Are there other aspects of resource value that should be considered, and if so, what are they?

2. *Focus on Success.* To what extent should selections be based on readiness to proceed and the likelihood of achieving positive environmental outcomes? EPA is considering giving preference to nominations that (1) demonstrate a knowledge of priority water resource problems, (2) have substantially completed planning for the

project, and (3) are ready to begin. The reasoning behind this is that these types of projects would have the greatest likelihood of attaining tangible environmental results in the near, rather than distant, future.

EPA is considering establishing a requirement that nominations be supported by a clearly articulated set of success or progress measures and a description of how these measures would be tracked. The Agency is also considering criteria which would address the capability of nominees to manage the project. Should each project be required to have a coordinator and a developed infrastructure for carrying out the project? While a grant may be awarded to an individual watershed group, an institution, or to a consortium of groups, it seems likely that a project leader would be needed to oversee the plan and take fiscal and practical responsibility for implementing the project. For example, should candidates be required to submit a detailed business plan? Should there be a cost-share requirement to demonstrate a real commitment to the project? And if so, how much? Should applicants that commit to provide a larger share of the project's cost be given preference?

Finally, one additional aspect of this category of potential criteria is the ability to transfer the experience gained from a project selected for the Initiative to other watersheds across the country. The goal of this criterion would be to develop and document restoration models that can be applied nationally. For this criterion, EPA would consider whether the success of the particular project could be repeated in other impaired or threatened watersheds.

3. Innovation. To what extent does the project test novel or unique approaches, concepts, or techniques? A key objective of the Initiative is to foster innovative and novel approaches to achieving environmental results. The designated watersheds are expected to serve as models of the most creative, economically successful and ecologically sustainable approaches to restoration and protection. A wide array of progressive and forward-thinking actions, such as pollutant trading, third-party total maximum daily loads (TMDLs), National Pollutant Discharge Elimination System (NPDES) watershed permits under the Clean Water Act, enforcement programs, and demonstration projects could be advanced. The public is invited to comment on this criterion and how it should be applied in the selection process.

4. Broad Support. The most successful watershed communities have

attained a local commitment, established stakeholder partnerships, and forged effective working relationships among State and local authorities. EPA is seeking comment on the extent to which partnerships should be demonstrated by the nominees for this Initiative. Should EPA have nominees submit letters of support, or affidavits, attesting to the establishment of partnerships and collaboration efforts? And, should one or more of the entities have a proven track record with respect to implementing environmental protection and restoration projects?

Another aspect to consider is what role, if any, should the Interagency Regional Coordination Teams play? These teams of representatives of Federal agencies that share common concerns about water quality are spread around the country to strengthen cross-agency communications and implementation activities. These regional teams were created to link the Federal government with on-the-ground water protection, restoration, and conservation efforts. As a result, they could be helpful in enhancing partnerships and leveraging resource possibilities.

5. Accountability. Performance expectations and attaining measurable results are a fundamental part of the Initiative. The progress of each watershed project must be measurable by scientifically sound ways that can also be understood and appreciated by the general public. Monitoring should be designed to show progress in the short term. Questions arising from this criterion are: should the nominee be required to provide a "Watershed Plan" as part of the nomination package and if so, what should be the key elements of that plan? What are the most appropriate measures of success for this Initiative? How could EPA and other affected stakeholders monitor the progress of each selected project and report on the results?

6. Integrated Application of EPA Programs. The Agency is also considering linking the goals of the Watershed Initiative with its programmatic goals and solicits comments on whether and how to apply such a criterion. For example, the Agency could give priority consideration to those watershed projects that incorporate an integrated approach to using regulatory and nonregulatory tools (e.g., water quality standards, source water protection, TMDLs, permits, financial incentives) to address a diversity of aquatic resources (e.g., rivers, streams, lakes, wetlands, riparian areas, and/or estuaries). A linkage could be applied to national

goals as well. In this case, special consideration could be given to watershed projects with national prominence, such as the Gulf Hypoxia Action Plan or the Pacific Northwest Salmon Recovery Program. The Agency is specifically seeking comment on whether, and if so how, watersheds that include estuaries should be linked to the National Estuary Program.

Should the Criteria Be Weighted?

Once the nomination materials have been submitted, EPA must determine how it will make its selections. EPA must decide whether any particular criterion should be "checked off" if met, or given more weight in the selection process than the others. For example, those nominations addressing the aquatic resources of greatest ecological or human health value could be considered first, or be scored higher by being assigned more "points." EPA is exploring these and other questions regarding how much information will be needed to select the best projects.

Should There Be a Minimum or Maximum Size Established for These Targeted Watersheds?

EPA is inclined to support a variety of watershed scales and geographic locations. The appropriate size and location of the watershed and/or project area may depend on the local circumstances, the level of impairment, and other factors. Funds may be awarded based on the scale of the project, the anticipated need, and the amount requested. While EPA is leaning toward not specifying the scale or location of the watershed, it invites additional thoughts and comments on this issue.

V. Request for Comments

This **Federal Register** notice is meant to solicit public participation in an initiative designed to encourage the building of partnerships in an effort to protect, preserve, and restore watersheds across the country. The goal of the Watershed Initiative is to provide funding and other types of assistance to communities with a broad spectrum of affected interests in attaining clean and healthy waterways. EPA invites constructive and insightful comments on the subject of this notice. The Agency is especially seeking the public's input and suggestions on the qualifying and selection criteria and other topics outlined in section IV. Commentors should feel free to deviate from the scope of this notice and provide comments on other possible innovative approaches to designing the Watershed Initiative.

Dated: May 16, 2002.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 02-12968 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7217-2]

National Environmental Justice Advisory Council, Indigenous Peoples Subcommittee; Notification of Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), Indigenous Peoples Subcommittee (IPS) will meet on the dates and times described below. All times noted are Mountain Time. All meetings are open to the public. Due to limited space, seating at the NEJAC/IPS meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The IPS meetings will take place at the John Ascuaga's Nugget, 1100 Nugget Avenue, Sparks, Nevada 89431. The meeting date and time is as follows: June 6 (1:30 PM-6:00 PM), 2002. The IPS will be focusing on the development of its two year strategic plan, and will discuss recommendations for EPA on support for tribes seeking to address environmental justice issues. Any member of the public wishing additional information on the subcommittee meeting, or who plans on attending the meeting should contact Mr. Daniel Gogal, IPS Designated Federal Officer, EPA Office of Environmental Justice, (202) 564-2576.

Dated: May 14, 2002.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 02-12970 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0034; FRL-6834-9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition

proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number OPP-2002-0034, must be received on or before June 24, 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.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-2002-0034 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8380; e-mail address: gandhi.bipin@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 Animal production Food manufacturing Pesticide manufacturing
	112	
	311	
	32532	

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" 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/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-2002-0034. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, 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 Highway, 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-2002-0034 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 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-2002-0034. 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 identified 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. Make sure to submit your comments by the deadline in this notice.

7. 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.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by MeadWestaco Corporation, and represents the view of MeadWestaco. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 2E6411

EPA has received a pesticide petition (2E6411) from MeadWestaco Corporation, 3950 Faber Place Drive, N. Charleston, SC 29405 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-

methyl-2-propenoate, ammonium salt (CAS Reg. No. 55989-05-4) when used as an inert ingredient (encapsulating agent, dispensers, resins, fibers and beads) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest, under 40 CFR 180.1001(c) and applied to animals under 40 CFR 180.1001(e). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. MeadWestvaco is petitioning that 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt be exempt from the requirement of a tolerance based upon the definition of a low risk polymer under 40 CFR 723.250(e). Therefore, an analytical method to determine residues of 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt in raw agricultural commodities (RACs) is not required.

B. Toxicological Profile

Acute toxicity. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies that would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without the data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. MeadWestvaco believes that the data and information described below is adequate to ascertain the toxicology and characterize the risk associated with the use of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt (CAS Reg. No. 55989-05-4) as an inert ingredient in pesticide formulations applied to growing crops and raw agricultural commodities after harvest, and animals.

In the case of certain chemical substances that are defined as "polymers," EPA has established a set of criteria that identify categories of

polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. EPA believes that polymers meeting the criteria noted below will present minimal or no risk.

2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt (CAS Reg. No. 55989-05-4) conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers:

1. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen, and nitrogen.

3. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt copolymer is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt is not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substance Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt is not a water-absorbing polymer.

7. 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt does not contain any group as reactive functional groups.

8. The minimum number-average molecular weight of the 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate is listed as 18,914 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

9. The 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate has a number-average molecular weight of 18,914 and contains less than 10% oligomeric material below molecular weight 500 and less than 25% oligomeric material below 1,000 molecular weight.

In addition, 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate is acceptable for use, with limitations, under 21 CFR for contact with food as a component in adhesives (21 CFR 175.105), coatings (21 CFR 175.300), and paper and paperboard (21 CFR 176.170). The ammonium hydroxide utilized to form the ammonium salt is listed in 21 CFR 184.1139 under the section, "Direct food substances affirmed as generally recognized as safe."

C. Aggregate Exposure

1. *Dietary exposure.* Exposure to 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt may occur through dietary (e.g., food wrapping containing copolymer) and non-occupational (e.g., printed articles) sources. The chemical characteristics of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt lead to the conclusion that there is a reasonable certainty of no harm from aggregate exposure to the polymer.

2. *Non-dietary exposure.* 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt formulations have been in commerce since the mid 1970's. The copolymer is ubiquitous in our every day environment and as it is commonly used in flexographic printing inks and coatings, such as on newspapers, corrugated boxes (e.g., pizza boxes), and disposable drinking cups.

Given the existing widespread and historic use of 2-propenoic acid, 2-methyl-, polymer with ethyl 2-

propenoate and methyl 2-methyl-2-propenoate, ammonium salt, any additional exposure resulting from the approval of the copolymer as an inert ingredient in pesticide formulations for use on growing crops or to raw agricultural commodities after harvest should not be of concern.

D. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt would be cumulative with those of any other chemical. Given the compound's categorization as a "low risk polymer" (40 CFR 723.250) and its proposed use as an inert ingredient in pesticide formulations, there is no reasonable expectation of increased risk due to cumulative exposure.

E. Safety Determination

1. *U.S. population.* 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt formulations have been in commerce since the mid 1970's. The copolymer is ubiquitous in our every day environment and as it is commonly used in flexographic printing inks and coatings, with no known adverse effects.

F. International Tolerances

There are no CODEX Maximum Residue Limits established for 2-Propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt in/on any crop commodities at this time.

[FR Doc. 02-12976 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0038; FRL-6835-9]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number OPP-2002-0038, must be received on or before June 24, 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.C. of the

SUPPLEMENTARY INFORMATION. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-2002-0038 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-9423; e-mail address: harris.thomas@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	111 112 311	Crop production Animal production 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/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP2002-0038. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, 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 Highway, 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-2002-0038 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 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-2002-0038. 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. Make sure to submit your comments by the deadline in this notice.
7. 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.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 6, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The summaries of the petitions were prepared by Sankyo Company, Ltd., and represent the views of the Sankyo Company. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Sankyo Company, Ltd.

PP 0F6134 and 1F6317

EPA has received pesticide petitions (0F6134 and 1F6317) from Sankyo Company, Ltd., c/o Rockwell Enterprises, Inc., 1720 Savannah Drive NE, Rio Rancho, NM 87124-5700 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of milbemectin (a mixture of milbemycins containing greater than or equal to 70% milbemycin A₄ [(6R, 25R)- 5-O-demethyl-28-deoxy-6, 28-epoxy-25-ethyl-milbemycin B] and less than or equal to 30% milbemycin A₃ [(6R, 25R)- 5-O-demethyl-28-deoxy-6, 28-epoxy-25-methyl-milbemycin B]) in or on the raw agricultural commodities citrus crop

group at 0.02 parts per million (ppm); citrus pulp, dried at 0.2 ppm; citrus oil at 0.1 ppm; cotton, undelinted seed at 0.02 ppm (CA only); cotton gin by-products at 0.08 ppm (CA only); pome fruit crop group at 0.02 ppm; apple pomace, wet at 0.15 ppm; stone fruit crop group at 0.03 ppm (CA only); strawberry at 0.04 ppm; tree nut crop group at 0.02 ppm; and almond hulls at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of milbemectin in apples, oranges and strawberries has been studied. The parent molecules (Milbemycin A₃ and Milbemycin A₄) are the only metabolites found at significant levels in plant metabolism studies or in field residue studies under conditions of use, and are the only expected metabolites of toxicological concern in plants. The photolytic metabolites of milbemectin (8,9Z-M.A₃ and 8,9Z-M.A₄) were not found at toxicologically significant levels in these metabolism studies or in field residue studies limit of quantitation (LOQ) (Method LOQ = 0.01 ppm), but were included as part of the tolerance expression at the request of EPA.

2. *Analytical method.* An adequate analytical method high performance liquid chromatography using ultra-violet detection (HPLC with UV fluorescence detection at 460 nm) is available for enforcement purposes. The parent compounds, milbemycin A₃ and milbemycin A₄, and their respective 8,9Z metabolites are converted to common moieties by derivatization before analysis. A successful Independent Laboratory Validation has been submitted.

3. *Magnitude of residues—i Cotton.* A total of 3 individual trials were conducted in California during the 1999 and 2000 crop season. Due to the limited geographical distribution of the crop residue trials for this crop grouping, a geographical restriction of California only is being requested. Applications were made at 1X the maximum labeled rate of 2 applications of 0.0192 lb. active ingredient/acre (a.i./acre) per crop season. Analyzed samples of undelinted cotton seed were < 0.01 ppm for both total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-

M.A₄). Based on analysis of the findings, the expected maximum residue levels in undelinted cotton seed is 0.02 ppm (0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)). Analyzed samples of cotton gin by-products were < 10 to 22.8 µg a.i./kg (0.023 ppm) of total M.A₃ (M.A₃ + 8,9Z-M.A₃) and < 10 to 54.9 µg a.i./kg (0.055 ppm) of total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, the expected maximum residue levels in cotton gin by-products is 0.08 ppm total milbemectin (M.A₃ + 8,9Z-M.A₃) + (M.A₄ + 8,9Z-M.A₄).

ii. *Strawberries.* A total of 8 individual field trials were conducted over a period of two crop seasons (1997, 1998) in 6 states. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 1. Applications were made at 1X (3 trials), 1.5X (1 trial) and 2X (4 trials) the maximum labeled rate of 4 applications of 0.019 lb. ai/acre, or 0.076 lb. ai/acre per crop season. After applying a correction factor of 0.5X to 0.75X where appropriate to the mean residue levels found in the samples, total residues of milbemectin (total M.A₃ + total M.A₄) in strawberries fell within a range of 0.012 ppm to 0.035 ppm. The method LOQ was 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). The photolytic metabolites of milbemectin (8,9Z-M.A₃ and 8,9Z-M.A₄) were not present in any samples where a separate analysis was conducted (LOQ = 0.01 ppm). Based on these findings, the expected maximum residue levels in strawberries is 0.04 ppm total milbemectin (M.A₃ + 8,9Z-M.A₃) + (M.A₄ + 8,9Z-M.A₄).

iii. *Citrus Crop Group:* The representative crops for this grouping as specified by 40 CFR 180.41 are sweet oranges, lemons and grapefruit.

a. *Oranges.* A total of 12 individual field trials were conducted over a period of two crop seasons (1997, 1998) in the states of California, Florida and Texas. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X (5 trials), 1.3X (3 trials) and 2X (4 trials) the maximum labeled rate of 3 applications of 0.024 lb. ai/acre, or 0.072 lb. ai/acre per crop season. All analyzed samples of the raw agricultural commodities (RAC) were less than the method LOQ of 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on these findings, the expected maximum residue levels in oranges is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

b. *Grapefruit*. A total of 6 individual field trials were conducted over a period of two crop seasons (1997, 1998) in the states of California, Florida and Texas. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X (3 trials), 1.3X (2 trials) and 2X (1 trial) the maximum labeled rate of 3 applications of 0.024 lb. ai/acre, or 0.072 lb. ai/acre per crop season. All analyzed samples of the RAC were less than the method LOQ of 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on these findings, the expected maximum residue levels in grapefruit is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

c. *Lemons*. A total of 5 individual field trials were conducted over a period of two crop seasons (1997, 1998) in the states of Arizona, California and Florida. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X (2 trials) and 2X (3 trials) the maximum labeled rate of 3 applications of 0.024 lb. ai/acre, or 0.072 lb. ai/acre per crop season. After applying a correction factor of 0.5X where appropriate to residue levels found in the samples, all analyzed samples of the RAC were less than the method LOQ of 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on these findings, the expected maximum residue levels in lemons is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

d. *Processed oranges*. The study was comprised of a single trial located in east central Florida. The test substance was applied to the treated plot once at 60 days prior to normal maturity at 0.120 lb. ai/acre and an additional two times at 30 and 7 days prior to normal maturity at 0.240 lb. ai/acre, or 8.33X the maximum labeled rate. After processing, samples of orange juice, dried pulp and orange oil were analyzed for total M.A₃ and total M.A₄. Reported mean values for total milbemectin (total M.A₃ + total M.A₄) were as follows: RAC - 0.011 ppm, dry pulp - 0.107, juice - <0.01 ppm and oil - 0.0541 ppm. The method LOQ in each commodity was 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). The concentration factors were determined to be 9.7X for dry pulp and 4.9X for oil. Based on these findings, the expected maximum residue levels in dry citrus pulp is 0.20 ppm and in citrus oil is 0.10 ppm.

iv. *Pome Fruit Crop Group*. The representative crops for this grouping as specified by 40 CFR 180.41 are apples and pears.

a. *Apples*. A total of 12 validated individual field trials were conducted over a period of two crop seasons (1997, 1998) in the states of California, Colorado, Michigan, North Carolina, New York, Pennsylvania, and Washington. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X (2 trials) and 2X (10 trials) the maximum labeled rate of 2 applications of 0.024 lb. ai/acre, or 0.048 lb. ai/acre per crop season. After applying a correction factor of 0.5X where appropriate to residue levels found in the validated samples, all residues were less than or equal to the method LOQ of 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on these findings, the expected maximum residue levels in apples is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

b. *Pears*. A total of 6 individual field trials were conducted over a period of two crop seasons (1997, 1998) in the states of California, New York, Oregon and Washington. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X (3 trials) and 2X (3 trials) the maximum labeled rate of 2 applications of 0.024 lb. ai/acre, or 0.048 lb. ai/acre per crop season. After applying a correction factor of 0.5X where appropriate to residue levels found in the samples, all residues were less than or equal to the method LOQ of 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on these findings, the expected maximum residue levels in pears is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

c. *Processed apples*. The study was comprised of a single trial located in eastern Washington. The test substance was applied to the treated plot twice at 28 and 7 days prior to normal maturity at 0.240 lb. ai/acre, or 10X the maximum labeled rate. After processing, samples of apple juice and wet pomace were analyzed for total M.A₃ and total M.A₄. Reported mean values for total milbemectin (total M.A₃ + total M.A₄) were as follows: RAC - 0.168 ppm, juice - < 0.01 ppm and wet pomace - 1.067 ppm. The method LOQ in each commodity was 0.01 ppm each for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). The concentration

factors were determined to be 6.4X for wet pomace and 0.06X for juice. Based on these findings, the expected maximum residue levels in wet apple pomace is 0.15 ppm. No residues in excess of the established tolerances in pome fruit juice, including apple juice, are expected.

v. *Stone Fruit Crop Group*. The representative crops for this grouping as specified by 40 CFR 180.41 are cherries, peaches and plums. Due to the limited geographical distribution of the crop residue trials for this crop grouping, a geographical restriction of California only is being requested.

a. *Cherries*. A total of 2 individual field trials were conducted during the 1999 crop season in the state of California. Applications were made at 1X the maximum labeled rate of 2 applications of 0.024 lb. ai/acre per crop season. Analyzed samples of the RAC were < 0.01 ppm for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and < 0.01 to 0.0117 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, the expected maximum residue levels in cherries is 0.03 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.02 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

b. *Peaches*. A total of 3 individual field trials were conducted during the 1999 crop season in the state of California. Applications were made at 1X the maximum labeled rate of 2 applications of 0.024 lb. ai/acre per crop season. All analyzed samples of the RAC were < 0.01 ppm for total M.A₃ (M.A₃ + 8,9Z-M.A₃) and < 0.01 to 0.0145 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, the expected maximum residue levels in peaches is 0.03 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.02 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

c. *Plums*. A total of 5 individual field trials were conducted during the 1999 crop season in the state of California. Applications were made at 1X the maximum labeled rate of 2 applications of 0.024 lb. ai/acre per crop season. All analyzed samples of the RAC were < 0.01 ppm for both total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, the expected maximum residue levels in plums is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

d. *Prunes*. The study was comprised of a single trial located in California. Applications were made at 5X the maximum labeled rate as 2 applications of 0.12 lb. ai/acre, 21 and 14 days respectively before crop harvest. After processing, samples of prunes were analyzed for total M.A₃ and total M.A₄. The mean residue levels in plums were

< 0.01 ppm of total M.A₃ (M.A₃ + 8,9Z-M.A₃) and 0.0193 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄). The mean residue levels in the prunes were < 0.01 ppm of total M.A₃ (M.A₃ + 8,9Z-M.A₃) and 0.0179 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, no concentration of residues is expected in the processed commodity, prunes.

vi. *Tree Nut Crop Group*. The representative crops for this grouping as specified by 40 CFR 180.41 are almonds and pecans.

a. *Almonds*. A total of 5 individual field trials were conducted during the 1999 crop season in the state of California. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X the maximum labeled rate of 2 applications of 0.024 lb. ai/acre per crop season. Analyzed samples of the almond nut meat samples were < 0.01 ppm for both total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). In almond hull samples the residue levels were < 0.01 to 0.0388 ppm of total M.A₃ (M.A₃ + 8,9Z-M.A₃) and < 0.01 to 0.0911 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, the expected maximum residue level in almonds is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)) and the expected maximum residue level in almond hulls is 0.2 ppm ((0.05 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.15 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

b. *Pecans*. A total of 5 individual field trials were conducted during the 1999 crop season in the states of Arkansas, Georgia and Texas. Number, type and location of trials were in accordance with those specified by Guideline OPPTS 860.1500, Table 2. Applications were made at 1X the maximum labeled rate of 2 applications of 0.024 lb. ai/acre per crop season. Analyzed samples of the pecan meat samples were < 0.01 ppm for both total M.A₃ (M.A₃ + 8,9Z-M.A₃) and total M.A₄ (M.A₄ + 8,9Z-M.A₄). Based on analysis of the findings, the expected maximum residue levels in pecans is 0.02 ppm ((0.01 ppm total M.A₃ (M.A₃ + 8,9Z-M.A₃) + 0.01 ppm total M.A₄ (M.A₄ + 8,9Z-M.A₄)).

A metabolism study in goats was conducted using 14C-labeled milbemycin A₄. In this study it was determined that the primary route of elimination of milbemectin in the goat was the feces and urine. Only very low levels of total radioactive residues were found in meat or meat by-products, fat, and milk. Based on the total radioactive residue levels in meat, meat by-products and milk found in the goat metabolism study and analysis of the

expected feeding levels from consumption of the feed commodities, the registrant has determined that finite residues in fed ruminants are not expected, therefore, no tolerances in meat or meat by-products, fat, and milk are required in accordance with 40 CFR 180.6.

The feed commodities, dried citrus pulp, wet apple pomace and almond hulls, are not utilized as a poultry feed stuff. The feed commodity, cotton meal, is utilized as a poultry feed stuff at 20% of the diet. Since applications of milbemectin at 5X the labeled rate resulted in no detectable residues in cotton seed of total M.A₃ or M.A₄ at the LOQ of 0.01 ppm, no detectable residues are expected to occur in poultry tissues including meat, fat, meat by-products and eggs. Therefore, no tolerances are required under the provisions of 40CFR 180.6.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD₅₀ in rats was 762 mg/kg for males and 456 milligrams/kilogram (mg/kg) for females, the dermal LD₅₀ of technical milbemectin is greater than 5,000 mg/kg, and the 4-hour acute inhalation LC₅₀ in rats is 1.9 milligrams per liter (mg/L) in males and 2.8 mg/L in females. It is not a dermal irritant or sensitizer and is a mild eye irritant. In a 28-day dermal study in rabbits, the no observed effect level (NOEL) was 1,000 mg/kg/day, the highest dose tested. No effects on mortality, general or specific toxic effects, gross pathology, clinical signs or other measured parameters at 1,000 milligrams/kilogram/day (mg/kg/day). The gross necropsy and histopathological evaluation revealed no apparent compound-related effects.

2. *Genotoxicity*. The following genotoxicity tests were all negative: Ames gene mutation, CHL chromosome aberration, mouse lymphoma cell mutation and *in vivo* mouse bone marrow micronucleus.

3. *Reproductive and developmental toxicity*. No reproductive or teratologic effects were observed in any study with milbemectin. Maternal NOEL's of 20 and 50 milligrams/kilogram/day (mg/kg/day) were observed in rat and rabbit teratogenicity studies but no teratogenic effects were observed at the highest doses tested, 60 and 1,000 mg/kg/day respectively. In a rat reproduction study the NOEL for both parents and offspring was observed to be 200 ppm, equivalent to consumption up to 26.4 mg/kg/day for males and 27.0 mg/kg/day for females. There were no reproductive effects at the highest dose tested, 800 ppm.

4. *Subchronic toxicity*. A NOEL of 3 mg/kg/day was derived from the dog 90-day feeding study. The NOEL derived from the rat 90-day study was 375 ppm for males. No NOEL was determined for females, however the NOEL from the chronic rat study for females was 150 ppm, equivalent to 8.77 mg/kg/day. The NOEL derived from the dog subchronic study is therefore the lowest of those derived from the studies.

5. *Chronic toxicity*. A NOEL of 3 mg/kg/day was derived from the dog 12-month feeding study. The NOEL derived from the rat 24-month chronic and oncogenicity study was 150 ppm, equivalent to 6.81 mg/kg/day for males and 8.77 mg/kg/day for females. The NOEL derived from the 96-week mouse oncogenicity study was 200 ppm, equivalent to 18.9 mg/kg/day for males and 19.6 mg/kg/day for females. The NOEL derived from the dog chronic study is, therefore, the lowest of those derived from the chronic studies. Milbemectin did not produce an oncogenic effect in either the rat or mouse study.

6. *Neurotoxicity*. The NOEL for acute neurotoxicity is 20 mg/kg with no neuropathological effects were noted at a dose levels of 100 mg/kg/day in female and 500 mg/kg/day in males. No histopathological evidence of central or peripheral neuropathology was associated with a single oral gavage dose at 500 mg/kg/day (males) or 100 mg/kg/day (females). The NOEL for subchronic neurotoxicity is the highest dose tested, 750 ppm (equivalent to 59.357 mg/kg/day for males and 72.416 mg/kg/day for females), based on a 13-week rat dietary neurotoxicity study. None of the observations noted during the functional observation battery (FOB) were considered to be related to exposure to the test substance. There were no statistically significant or otherwise notable differences between the mean motor activity counts of the control and treated rats during weeks 4, 8, and 13. There was no macroscopic or microscopic evidence central or peripheral neurotoxicity associated with 13 weeks of dietary administration to rats.

7. *Animal metabolism*. In a rat metabolism study conducted in Japan, more than 98% of the applied dose was excreted within 7 days, mostly in the feces. Radioactivity in blood reached maximum levels within 3 hours, with a half-life of 7–8 hours. In tissues, maximum levels were reached in 6 hours in the intestines, followed by the liver, fat and stomach. Residues in rats underwent extensive oxidation. Metabolites identified were hydroxy-, epoxy- and dehydrogenated

milbemectins, followed by a number of polar metabolites. No metabolite exceeded 5% of the dose. Excretion, tissue distribution and metabolic profile after multiple day dosing was essentially the same as the single dose suggesting that none of the residues accumulate in any tissue.

In a more recent US study, no overt signs of toxicity were associated with 14C-M.A₄ following oral administration to male and female rats at 2.5 and 25 mg/kg. No significant gender-related differences were noted in the excretion, adsorption or distribution of 14C-M.A₄. In analysis of tissues other than the gastrointestinal (GI) tract, the highest concentrations of total radioactive residue (TRR) was found in the liver for both genders at all time points. The lowest concentrations were found in the brain, eyes, *uterus* and *testes* of males and/or females. Excretion of TRR was rapid with most excreted within 24 hours post dose. Total recovery of radioactivity in feces through 168 hours post dose was from 84.8% to 100% for the low dose, and 81.5% to 92.8% for the high dose. Biliary excretion played a significant role in elimination of 14C-M.A₄ in rats. Based on TRR in bile and urine, ca 47% of the dose was absorbed in both sexes at the low dose level, and 40% and 30% were absorbed in males and females respectively at the high dose. Based on pharmacokinetic parameters of TRR in plasma, 14C-M.A₄ reaches maximum concentrations at 2 to 3 hours post dose and is eliminated slowly in the high dose groups. The metabolic pathway of 14C-M.A₄ in rats consists mainly of primary metabolism by hydroxylation, with the major metabolite, 13-hydroxy-M.A₄, found in all plasma, liver and kidney samples. The unchanged parent compound was detected in the high dose group in all liver samples, except the 24-hour liver samples, all analyzed kidney samples and in the early time points of the plasma samples. It was also found in the 2-hour liver samples of the low dose group. A minor glucuronidation pathway was identified in the bile. Excretion, tissue distribution, and metabolic profiles were the same for single and multiple dosing suggesting that residues do not accumulate.

8. *Metabolite toxicology.* There is no evidence that the metabolites of milbemectin as identified in either the plant, or animal metabolism studies are of any toxicological significance.

9. *Endocrine disruption.* There is no evidence from the developmental/chronic studies that milbemectin induces any estrogenic or other endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* Milbemectin is not currently registered as a pesticide in the U.S. and no tolerances have been previously established for food or feed commodities. Analysis of dietary exposure for proposed tolerances was made using Novigen Sciences DEEM software Version 7.62 using the USDA Continuing Survey of Food Intakes by Individuals.

i. *Food.* Tolerances are proposed for the combined residues of the miticide/insecticide milbemectin (a mixture of milbemectins containing greater than or equal to 70% milbemycin A₄ [(6R, 25R)-5-O-demethyl-28-deoxy-6, 28-epoxy-25-ethyl-milbemycin B] and less than or equal to 30% milbemycin A₃ [(6R, 25R)-5-O-demethyl-28-deoxy-6, 28-epoxy-25-methyl-milbemycin B] and their 8,9-Z isomers (expressed as parts per million of the parent compound) in or on the following agricultural commodities: citrus crop group - 0.02 ppm, citrus pulp, dried - 0.20 ppm, citrus oil - 0.10 ppm, cotton, undelinted seed (CA only) - 0.02 ppm, cotton gin by-products (CA only) - 0.08 ppm, pome fruit crop group - 0.02 ppm, apple pomace, wet - 0.15 ppm, stone fruit crop group (CA only) - 0.03 ppm, strawberries - 0.04 ppm, tree nut crop group - 0.02 ppm and almond hulls - 0.20 ppm.

a. *Acute dietary risk analysis.* An acute reference dose (aRfD) of 0.20 mg/kg/day was used in a acute dietary risk analysis. The aRfD is based on oral no observed adverse effects levels (NOAEL's) of 20 mg/kg/day in the acute neurotoxicity and teratology studies in rats, divided by an uncertainty factor of 100 (interspecies safety factor = 10, intraspecies safety factor = 10). There was no evidence from the developmental or chronic studies that milbemectin induces any estrogenic or other endocrine effects. Therefore, the Food Quality Protection Act (FQPA) additional 10X uncertainty factor was not used. In the Tier 1 analysis it was assumed that all residues would be equal to the pending tolerances on cotton seed of 0.02 ppm, strawberries of 0.04 ppm, citrus, pome fruit, tree nuts of 0.02 ppm, and stone fruit of 0.03 ppm. It was assumed that 100% of the nation's acreage would be treated. Based on the review of data from the reproduction and teratology studies, no additional FQPA safety factor was applied to infants, since no additional toxicity to or sensitivity of the fetal or nursing infant test animals was seen during exposure to the test material. Based on this tier 1 analysis, the acute dietary exposure of all infants and nursing infants (<1 yr. old) would be

only 0.58% at the 99.9th percentile of the proposed aRfD. The percentage of the proposed aRfD for the U.S. population and all other subgroups are below this amount.

b. *Chronic dietary risk analysis.* A reference dose (RfD) of 0.03 mg/kg/day was used in a chronic dietary risk analysis. The RfD is based on a NOEL of 3 mg/kg/day derived from the dog 90-day and 12-month feeding studies, the lowest of those derived from the chronic feeding studies. In view of the fact that no special sensitivity in offspring were observed in any test and that no reproductive or teratogenic effects were observed, an uncertainty factor of 100 (interspecies safety factor = 10, intraspecies safety factor = 10) was used for milbemectin. In the Tier 1 analysis it was assumed that all residues would be equal to the pending tolerances on cotton seed of 0.02 ppm, strawberries of 0.04 ppm, citrus, pome fruit, tree nuts of 0.02 ppm, and stone fruit of 0.03 ppm. It was assumed that 100% of the nation's acreage would be treated. Based on the review of data from the reproduction and teratology studies, no additional FQPA safety factor was applied to infants, since no additional toxicity to or sensitivity of the fetal or nursing infant test animals was seen during exposure to the test material. Based on this tier 1 analysis, the dietary exposure of non-nursing infants would be only 0.4% of the proposed RfD. The percentage of the proposed RfD for the U.S. population and all other subgroups are below this amount.

c. *Carcinogenic risk analysis.* Not applicable. Milbemectin did not produce an oncogenic effect in two animal feeding studies.

ii. *Drinking water.* A screening level drinking water assessment for milbemectin was conducted using a maximum use scenario. Potential drinking water concentrations were estimated using models generated by GENEEC (surface water) and SCIGROW (ground water). Input parameters for the use models were those which maximized concentrations in water.

Dietary exposures were modeled with DEEM version 7.62 using the USDA Continuing Survey of Food Intakes by Individuals. It was assumed that all residues would be equal to the pending tolerances on cotton seed of 0.02 ppm, strawberries of 0.04 ppm, citrus, pome fruit, tree nuts of 0.02 ppm, and stone fruit of 0.03 ppm. It was assumed that 100% of the nation's acreage would be treated. Both acute and chronic exposures were modeled. For the acute assessment, the 99.9th percentile of exposure was used. The most highly

exposed subpopulations representing children, adult males, and adult females were evaluated. There are no residential exposures to consider at this time.

a. *Acute exposure and risk.* An aRfD of 0.20 mg/kg/day was used in an acute dietary risk analysis. The aRfD is based on oral NOAEL's of 20 mg/kg/day in the acute neurotoxicity and teratology studies in rats, divided by an uncertainty factor of 100 (interspecies safety factor = 10, intraspecies safety factor = 10). There was no evidence from the developmental or chronic studies that milbemectin induces any estrogenic or other endocrine effects. Therefore, the FQPA additional 10X uncertainty factor was not used.

The estimated screening level water concentrations of milbemectin in surface and ground water are 0.813 µg/L (peak EEC from GENECC) and 0.005 µg/L (from SCIGROW), respectively. The acute DWLOCs for milbemectin for the most susceptible populations were calculated to be 6,990.83 µg/L, 5,985.45 µg/L and 1,987.55 µg/L for males, 13–19 years; females, 13+ years, nursing; and all infants, respectively.

Since the screening level water concentrations were orders of magnitude less than the acute drinking water levels of concerns (DWLOC's), the Agency should have no concern about exposures from drinking water.

b. *Chronic exposure and risk.* A RfD of 0.03 mg/kg/day was used in a chronic dietary risk analysis. The RfD is based on NOAEL of 3 mg/kg/day derived from the dog 90-day and 12-month feeding studies, the lowest of those derived from the chronic feeding studies. In view of the fact that no special sensitivity in offspring were observed in any test and that no reproductive or teratogenic effects were observed, an uncertainty factor of 100 (interspecies safety factor = 10, intraspecies safety factor = 10) was used for milbemectin. Based on the review of data from the reproduction and teratology studies, no additional FQPA safety factor was applied to infants, since no additional toxicity to or sensitivity of the fetal or nursing infant test animals was seen during exposure to the test material.

The estimated screening level water concentrations of milbemectin in surface and ground water are 0.434 µg/L (56 day average EEC from GENECC) and 0.005 µg/L (from SCIGROW), respectively. The chronic DWLOCs for milbemectin for the most susceptible populations were calculated to be 1,049.30 µg/L, 899.13 µg/L and 299.08 µg/L for males, 13–19 years; females, 13+ years, nursing; and non-nursing infants, respectively.

Since the screening level water concentrations were orders of magnitude less than the chronic DWLOC's, the Agency should have no concern about exposures from drinking water.

2. *Non-dietary exposure.* There are no current non-food uses for milbemectin registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. No non-dietary exposures are expected for the general public. Secondary exposure would not be expected since milbemectin is not expected to be taken up by plants from the soil. The low application rates and short soil half-life are not conducive to buildup in the environment.

D. Cumulative Effects

At this time, the Agency has not reviewed available information concerning the potentially cumulative effects of milbemectin and other substances that may have a common mechanism of toxicity. For purposes of this petition only, the Agency is considering only the potential risks of milbemectin in its aggregate exposure.

E. Safety Determination

1. *U.S. population.* As pointed out above in dietary exposure-food, the acute dietary exposure of all infants and non-nursing infants (<1 yr. old) would be only 0.58% at the 99.9th percentile of the proposed aRfD and the chronic dietary exposure of non-nursing infants would be only 0.4% of the proposed RfD. The percentages of aRfD and chronic RfD for the U.S. population and all other subgroups are below these amounts.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of milbemectin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. No developmental or reproductive effects have been observed in any study with milbemectin. The calculation of safety margins with respect to these segments of the population were taken into consideration in the tolerance method validation (TMRC) estimates with respect to the risk associated with the percentage of the reference dose being consumed. It is concluded that

there is a reasonable certainty of no harm to infants and children from aggregate exposure to milbemectin residues.

F. International Tolerances

No Codex maximum residue levels have been established for residues of milbemectin. Milbemectin is not yet registered for use on any crop in Canada or Mexico. National maximum residue levels (MRL's) for milbemectin in Japan are as follows: Apple, Pear, Peach, Citrus, Melon, Watermelon, Cucumber, Eggplant, Adzuki-bean - 0.2 ppm, Strawberry, Cherry, Grape - 0.5 ppm, and Tea - 2 ppm. National MRL's for milbemectin in Taiwan are as follows: Small berry (Grape, Strawberry, Star fruit, etc.), Tree fruit (Pear, Apple, Cherry, Peach, Plum, etc.), Vegetables (Eggplant, Cucumber, Tomato, etc.), Melon (Watermelon, Muskmelon, etc.) - 0.2 ppm; Tea - 2 ppm. In general, where national MRL's differ from those proposed to EPA, they are associated with agricultural and regulatory practices that differ from those common in the U.S.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7216-3]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations revising the interim enhanced surface water treatment rule and disinfection by-product rule. EPA has determined that the interim enhanced surface water treatment rule and disinfection by-product rule revisions meet all minimum federal requirements, and are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by June 24, 2002 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial

request for a public hearing is made by June 24, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on June 24, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Janine Morris, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone 404-562-9480).

Authority: (Section 1401 and section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142).

Dated: May 7, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02-12969 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7216-5]

Public Water Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations which incorporate the requirements of

the Interim Enhanced Surface Water Treatment Rule and the Stage 1 Disinfection/Disinfectants Byproducts Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by June 24, 2002 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by June 24, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on June 24, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on the behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, L&C Tower, Sixth Floor, Nashville, Tennessee, 37243-1549, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Fred Hunter, EPA Region 4, Drinking Water Section at the Atlanta address given above, or by telephone at (404) 562-9477.

Authority: Sections 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 141 and 142.

Dated: May 7, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02-12971 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7216-4]

Public Water Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations which provide minor revisions to the Lead and Copper Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by June 24, 2002 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by June 24, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on June 24, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on the behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, L&C Tower, Sixth Floor, Nashville, Tennessee 37243-1549, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Fred Hunter, EPA Region 4, Drinking Water Section at the Atlanta address given above, or by telephone at (404) 562-9477.

Authority: Sections 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 141 and 142.

Dated: May 10, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02-12972 Filed 5-22-02; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to guarantee \$13.95 million of equipment, and other goods and services on behalf of a U.S. exporter to a buyer in Mexico. The U.S. exports will enable the Mexican company to increase aluminum engine block output by 550,000 units per year. This new production will be exported to the United States and Canada. Interested parties may submit comments on this transaction by email to economic.impact@exim.gov or by mail to 811 Vermont Avenue, NW, Room 1238, Washington, DC 20571, within 14 days of this notice appears in the **Federal Register**.

Export-Import Bank of the US
Economic Impact Policy.

Helen S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02-12951 Filed 5-22-02; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 02-35; FCC 02-147]

Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Provision of In-Region, InterLATA Services in the States of Georgia and Louisiana

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission grants the section 271 application of BellSouth

Corporation, *et al.* (BellSouth) for authority to enter the interLATA telecommunications market in the states of Georgia and Louisiana. The Commission grants BellSouth's application based on its conclusion that BellSouth has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective May 24, 2002.

FOR FURTHER INFORMATION CONTACT:

Rene Crittendon, Senior Attorney Advisor, Wireline Competition Bureau, at (202) 418-1580 or via the Internet at rcrittendon@fcc.gov. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in CC Docket No. 02-35, FCC 02-147, adopted May 15, 2002, and released May 15, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. It is also available on the Commission's website at http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/bellsouth_gala/welcome.html.

Synopsis of the Order

1. *History of the Application.* On February 14, 2002, BellSouth filed a joint application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in Georgia and Louisiana.

2. *The Georgia and Louisiana Public Service Commissions' Evaluations.* Both the Georgia Public Service Commission (Georgia Commission) and the Louisiana Public Service Commission (Louisiana Commission) advised the Commission, following an extensive review process, that BellSouth met the checklist requirements of section 271 and has taken the statutorily required steps to open its local markets to competition. Consequently, the Georgia Commission and the Louisiana Commission recommended that the Commission approve BellSouth's in-region, interLATA entry in its March 4, 2002

evaluation of the Georgia and Louisiana Application.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of BellSouth's Georgia/Louisiana Application on March 19, 2002. It recommended approval of the application subject to the Commission's review of improvements in BellSouth's operations support systems (OSS).

Primary Issues in Dispute

4. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that BellSouth has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

5. The Commission finds that BellSouth UNE rates in Georgia and Louisiana are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, BellSouth UNE rates in Georgia and Louisiana satisfy checklist item 2. Because the Commission has not previously approved a section 271 application of BellSouth, it conducts a stand-alone analysis of BellSouth's rates, in which it reviews the rates from the "bottom up" to ensure they comply with our TELRIC standards rather than engaging in any benchmarking or other state comparisons. The Commission has previously noted that different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce. After reviewing commenters' criticism of loop rate issues (including use of Universal Digital Loop Carrier and Integrated Digital Loop Carrier, loading factors and fill factors), switching rate issues and Daily Usage File (DUF) rates, the Commission concludes that the Georgia and Louisiana Commissions followed basic TELRIC principles and there is insufficient evidence to demonstrate that the state commissions committed clear error.

6. The Commission also concludes that BellSouth meets its obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with BellSouth regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning,

maintenance and repair, and billing, as well as change management and technical assistance), BellSouth provides access that enables competing carriers to perform the functions in substantially the same time and manner as BellSouth or, if there is not an appropriate retail analogue in BellSouth's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

7. Pursuant to this checklist item, BellSouth must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Based on the evidence in the record, and upon BellSouth's legal obligations under interconnection agreements, BellSouth demonstrates that it provides to competitors combinations of already-combined network element as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

Other Checklist Items

8. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that BellSouth demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders. Pursuant to this checklist item, BellSouth must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in BellSouth's network.

9. BellSouth also demonstrates that its collocation offerings in Georgia and Louisiana satisfy the requirements of sections 251 and 271 of the Act and are in compliance with the Commission's recent *Collocation Remand Order*. BellSouth demonstrates that it offers interconnection in Georgia and Louisiana to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

10. *Checklist Item 4—Unbundled Local Loops.* BellSouth has adequately demonstrated that it provides unbundled local loops as required by section 271. More specifically, BellSouth establishes that it provides access to loop make-up information in compliance with the *UNE Remand Order* and nondiscriminatory access to stand alone xDSL-capable loops and high-capacity loops. Also, BellSouth provides voice grade loops, both as new loops and through hot-cut conversions, in a nondiscriminatory manner. Finally, BellSouth has demonstrated that it has

a line-sharing and line-splitting provisioning process that affords competitors nondiscriminatory access to these facilities.

11. *Checklist Item 5—Unbundled Local Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." The Commission concludes, based upon the evidence in the record, that BellSouth demonstrates that it provides unbundled local transport, in compliance with the requirements of checklist item 5.

12. *Checklist Item 6—Unbundled Local Switching.* Based on the Commission's review of the record, it concludes that BellSouth provides (1) line-side and trunk side facilities; (2) basic switching function; (3) vertical features; (4) customized routing; (5) shared trunk ports; (6) unbundled tandem switching; (7) usage information for billing exchange access; and (8) usage information for billing for reciprocal compensation in compliance with checklist item 6.

13. *Checklist Item 7—911/E911 Access and Directory Assistance/Operation Services.* Based on the Commission's review of the record, it finds that BellSouth provides nondiscriminatory access to 911 and E911 services and access to directory assistance services to allow the other carrier's customers to obtain telephone numbers and operator call completion services in compliance with checklist item 7.

14. *Checklist Item 8—White Pages.* Based on the record, the Commission finds that BellSouth provides white page directory listings for customers of the other carrier's telephone exchange service and permits competitive providers of telephone exchange service and toll service to have access to directory listings in compliance with checklist item 8.

15. *Checklist Item 11—Number Portability.* The Commission finds that BellSouth complies with checklist item 11 in that it provides, to the extent technically feasible, number portability.

16. *Checklist Item 12—Local Dialing Parity.* Based on the evidence in the record, the Commission concludes that BellSouth provides nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of the Act in compliance with checklist item 12.

17. *Checklist Item 13—Reciprocal Compensation.* The Commission finds

that BellSouth demonstrates that it provides reciprocal compensation as required by checklist item 13.

18. *Checklist Item 14—Resale.* Based on the evidence in the record, the Commission concludes that BellSouth demonstrates that it makes telecommunications services, including DSL resale, available in Georgia and Louisiana for resale, in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements for checklist item 14.

19. *Checklist Items 3, 9 and 10.* An applicant under section 271 must demonstrate that it complies with checklist item 3 (poles, ducts, conduits, and rights of way), item 9 (numbering administration), and item 10 (databases and associated signaling). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that BellSouth demonstrates that it is in compliance with checklist items 3, 9, and 10 in Georgia and Louisiana. Both the Georgia Commission and the Louisiana Commission also conclude that BellSouth complies with the requirements of each of these checklist items.

Other Statutory Requirements

20. *Compliance with Section 271(c)(1)(A).* The Commission concludes that BellSouth demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Georgia and Louisiana. The record demonstrates that competitive LECs serve some business and residential customers using predominantly their own facilities.

21. *Section 272 Compliance.*

BellSouth has demonstrated that it complies with the requirements of section 272.

22. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

23. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. The Commission also finds that the record confirms our view that a BOC's entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

24. The Commission also finds that the performance monitoring and enforcement mechanisms developed in Georgia and Louisiana, in combination with other factors, provide meaningful assurance that BellSouth will continue to satisfy the requirements of section 271 after entering the long distance market.

25. *Section 271(d)(6) Enforcement Authority.* Working with the Georgia and Louisiana Commissions, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 02-12978 Filed 5-22-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL TRADE COMMISSION

[File No. 0110174]

Aurora Associated Primary Care Physicians, L.L.C., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 12, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed

in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for May 13, 2002), on the World Wide Web, at "<http://www.ftc.gov/os/2002/05/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Agreement Containing Consent order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Aurora Associated Primary Care Physicians, L.L.C. ("AAPCP"), Richard A. Patt, M.D., Gary L. Gaede, M.D., and Marcia L. Brauchler ("Respondents"). The agreement settles charges that Respondents violated

section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among AAPCP's members to fix prices and other terms of dealing with health insurance firms and other third-party payors (hereinafter, "payors"), and to refuse to deal with payors except on collectively determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations in the Commission's proposed complaint are summarized below.

AACP has approximately 45 primary care physicians in its membership. A board of managers operates AAPCP, and Dr. Patt is the board's chairman. Except to the extent that competition has been restrained as alleged in the proposed complaint, AAPCP's members compete with each other as internists, pediatricians, family physicians, or general practitioners, in offices located in the Aurora, Colorado, area. To be competitively marketable to employers and other purchasers in the Aurora areas, a payor's health insurance plan must include in its network of participating physician a large number of primary care physicians who practice in the Aurora area.

The physicians formed AAPCP as a vehicle collectively to negotiate contracts with payors, and thereby to achieve contracts containing higher fees and other, more advantageous terms than the individual physicians could obtain unilaterally. AAPCP members authorized AAPCP to negotiate for this purpose. Members also agreed to accept "non-risk" contracts, which are contracts that do not involve sharing among physicians of financial risk,

through arrangements such as capitation or fee withholds. Further, before the entire organization could accept a proposed payor contract, AAPCP's board had to approve it.

In or about May 2000, AAPCP retained Ms. Brauchler, a non-physician consultant, after she had made a board presentation showing how AAPCP could collect fee information from members and use that information to reach a consensus on an initial fee level to demand from payors on the collective membership's behalf.

Sometimes a network of competing physicians uses an agent to convey to payors information obtained individually from the physicians about fees or other significant contract terms that they are willing to accept. The agent may also convey to the physicians all payor contract offers, which the physicians then unilaterally decide whether to accept or reject. Such a "messenger model" arrangement, which is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice (*see* <http://www.ftc.gov/reports/hlth3s.htm>), can facilitate and minimize the costs involved in contracting between physicians and payors, without fostering an agreement among competing physicians on fees or fee-related terms.

AAPCP purported to operate as a messenger, but, in practice, it did not do so. Rather, in 2000 and 2001, Dr. Patt and Ms. Brauchler, together with Dr. Gaede, who is an *ex-officio* member of the board, and other physicians designated by Respondent AAPCP, on behalf of Respondent AAPCP's members, used the information gathered from members to negotiate fees and other competitively significant terms collectively on behalf of AAPCP's members. Only if a payor offered a contract containing sufficiently high fees did Drs. Patt and Gaede and Ms. Brauchler recommend that the board approve the contract and that the members accept it. The Respondent's refusal to recommend to the board, or convey to AAPCP's members, contract offers containing price and other terms that they deemed to be deficient. Instead, they demanded, and received, contract terms that were more economically advantageous, from the physicians' perspective, than the physicians themselves could have obtained by negotiating individually rather than collectively.

AAPCP functioned as its members' *de facto* exclusive representative. Drs. Patt and Gaede and Ms. Brauchler told payors that AAPCP had the authority to

negotiate and sign contracts on behalf of all of its members, and AAPCP's members themselves sent letters to payors, asserting that they would deal with payors only through AAPCP and not unilaterally. Respondents also successfully applied coercive tactics. For example, they advised AAPCP members to terminate, or threaten to terminate, their pre-existing, individual contracts with payors. Many AAPCP members complied, to pressure payors into offering a new contract to AAPCP that paid fees at or above the level that the physicians, through AAPCP, collectively demanded. The terminations and threats of termination left payors in the untenable position of having to pay higher fees to AAPCP members, or being denied such members' inclusion in the payors' respective provider networks. As a consequence of this conduct, AAPCP or its members contracted with various payors for fees that were higher than the fees such payors had agreed to pay other primary care physicians in the area.

Respondents' joint negotiation of fees and other competitively significant terms has not been reasonably related to any efficiency-enhancing integration. AAPCP members have not financially or clinically integrated their practices to create sufficiently substantial potential efficiencies. Respondents' actions have restrained price and other forms of competition among the members, caused fees for physician services to rise, and harmed consumers, including health plans, employers, and individual patients.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of these illegal concerted actions, while allowing Respondents to engage in legitimate conduct that does not impair competition. The proposed order's core prohibitions are contained in Paragraph II and III.

Paragraph II is intended to prevent the Respondents from participating in, or creating, future unlawful physician agreements.

Paragraph II.A prohibits, AAPCP, Drs. Patt and Gaede, and Ms. Brauchler from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than AAPCP.

Paragraph II.B prohibits these Respondents from facilitating exchanges

of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C prohibits them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits them from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II also contains three provisos intended to clarify certain types of agreements that Paragraph II does not prohibit. The first proviso applies to Ms. Brauchler, the second to Drs. Patt and Gaede, and the third to AAPCP. Each provides that nothing in Paragraph II prohibits the applicable Respondent from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The proviso applies to AAPCP only if the physicians who participate in the arrangement are available to enter into payor contracts outside the arrangement, *i.e.*, the arrangement is not exclusive.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, all physician participants must share substantial financial risk through the arrangement and thereby create incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the Health Care Statements.

As defined in the proposed order, a "qualified clinically-integrated joint arrangement" also must satisfy two conditions. First, all physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. This definition also reflects the analysis contained in the Health Care Statements.

Paragraph II's provisos, as they apply to Drs. Patt and Gaede and Ms. Brauchler, also provide that Paragraph II

does not prohibit them from facilitating an agreement solely between physicians who are part of the same medical group practice. The proposed order defines such a practice as a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph III prohibits Ms. Brauchler, for a period of three years, from negotiating with any payor on behalf of any current or past member of AAPCP, and from advising any current or past member of AAPCP to accept or reject any term, condition, or requirement of dealing with any payor.

Ms. Brauchler is not prohibited from performing legitimate "messenger" services, including with respect to AAPCP. As noted above, a properly constituted messenger can efficiently facilitate the establishment of physician-payor contracts and avoid fostering unlawful agreements among the participating physicians. As set forth in the proposed complaint, however, while Ms. Brauchler purported to operate as a legitimate messenger, in practice she fostered anticompetitive physician agreements by negotiating directly with payors for higher fees on behalf of AAPCP's entire membership, and by advising AAPCP's members collectively to reject various payor offers and to engage in concerted refusals to deal. For this reason, Paragraph III is a necessary and appropriate supplement to Paragraph II's provisions. Under the proposed order, Ms. Brauchler may serve as AAPCP's messenger, but, pursuant to Paragraph III, may not negotiate for or advise any AAPCP member with respect to payor contracts.

Paragraph IV.C requires AAPCP to terminate, without penalty at any payor's request, current contracts with payors with respect to providing physician services. This provision is intended to eliminate the effects of Respondents' anticompetitive concerted actions. The remaining provisions of Paragraph IV and Paragraphs V through VIII of the proposed order impose obligations on Respondents with respect to distributing the proposed complaint and order to AAPCP's members and to other specified persons, and reporting information to the Commission.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 02-12954 Filed 5-22-02; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 011 0173]

Physician Integrated Services of Denver, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 12, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 13, 2002), on the World Wide Web, at "<http://www.ftc.gov/os/2002/05/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW.,

Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Physician Integrated Services of Denver, Inc. ("PISD"), Michael J. Guese, M.D., and Marcia A. Brauchler ("Respondents"). The agreement settles charges that Respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among PISD's members to fix prices and other terms of dealing with health insurance firms and other third-party payors (hereinafter, "payors"), and to refuse to deal with payors except on collectively determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondents violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations in the Commission's proposed complaint are summarized below.

PISD has approximately 41 primary care physicians in its membership. Dr.

Guese is PISD's president and sole director. Ms. Branchler is a consultant and advisor to PISD. Except to the extent that competition has been restrained in the manner set forth in the proposed complaint, PISD's members compete with each other as internists, pediatricians, family physicians, or general practitioners, in offices located in the southern part of the Denver, Colorado, metropolitan area ("South Denver area"). To be competitively marketable to employers and other purchasers in the South Denver area, a payor's health insurance plan must include in its network of participating physicians a large number of primary care physicians who practice in the South Denver area.

The physicians formed PISD as a vehicle collectively to negotiate contracts with payors, and thereby to achieve contracts containing higher fees and other, more advantageous terms than the individual physicians could obtain unilaterally. PISD members authorized PISD to negotiate for this purpose. They also authorize PISD to negotiate "non-risk" contracts, which are contracts that do not involve sharing among physicians of financial risk, through arrangements such as capitation or fee withholds. Further, before the entire organization can accept a proposed mayor contract, a majority of PISD's members must approve it.

Sometimes a network of competing physicians uses an agent to convey to payors information obtained individually from the physicians about fees or other significant contract terms that they are willing to accept. The agent may also convey to the physicians all payor contract offers, which the physicians then unilaterally decide whether to accept or reject. Such a "messenger model" arrangement, which is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice (see <http://www.ftc.gov/reports/hlth3s.htm>), can facilitate and minimize the costs involved in contracting between physicians and payors, without fostering an agreement among competing physicians on fees or fee-related terms.

PISD purported to operate as a messenger, but, in practice, it did not do so. Rather, from 1999 through 2001, Dr. Guese and Ms. Brauchler negotiated fees and other competitively significant terms collectively on behalf of PISD's members. Only if a payor offered a contract containing sufficiently high fees did Dr. Guese and Ms. Brauchler recommend to the members that they accept the contract. Dr. Guese and Ms. Brauchler refused to convey to PISD's

members contract offers containing price and other terms that Dr. Guese and Ms. Brauchler deemed to be deficient. Instead, they demanded, and received, contract terms that were more economically advantageous, from the physicians' perspective, than the physicians themselves could have obtained by negotiating individually rather than collectively.

PISD functioned as its members' *de facto* exclusive representative. Respondents told payors that PISD had the authority to negotiate and sign contracts on behalf of all of its members, and members themselves sent letters to payors, asserting that they would deal with payors only through PISD, Dr. Guese, or Ms. Brauchler, and not unilaterally. Respondents also successfully applied coercive tactics. For example, they advised PISD members to terminate, or threaten to terminate, their pre-existing, individual contracts with payors. Many PISD members complied, to pressure payors into offering a new contract to PISD that paid fees at or above the level that the physicians, through PISD, collectively demanded. The terminations and threats of termination left payors in the untenable position of having to pay higher fees to PISD members, or being denied such members' inclusion in the payors' respective provider networks. As a consequence of this conduct, PISD or its members contracted with various payors for fees that were higher than the fees such payors had agreed to pay other primary care physicians in the area.

Respondents' joint negotiation of fees and other competitively significant terms has not been reasonably related to any efficiency-enhancing integration. PISD refused to consider any form of financial risk-sharing, and its members have not clinically integrated their practices to create sufficiently substantial potential efficiencies. Respondents' actions have restrained price and other forms of competition among the members, caused fees for physician services to rise, and harmed consumers, including health plans, employers, and individual patients.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of these illegal concerted actions, while allowing Respondents to engage in legitimate conduct that does not impair competition. The proposed order's core prohibitions are contained in Paragraphs II and III.

Paragraph II is intended to prevent the Respondents from participating in, or creating, future unlawful physician agreements.

Paragraph II.A prohibits PISD, Dr. Guese, and Ms. Brauchler from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than PISD.

Paragraph II.B prohibits these Respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C prohibits them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits them from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II also contains three provisos intended to clarify certain types of agreements that Paragraph II does not prohibit. The first proviso applies to Ms. Brauchler, the second to Dr. Guese, and the third to PISD. Each provides that nothing in Paragraph II prohibits the applicable Respondent from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The proviso applies to PISD only if the physicians who participate in the arrangement are available to enter into payor contracts outside the arrangement, *i.e.*, the arrangement is not exclusive.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, all physician participants must share substantial financial risk through the arrangement and thereby create incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms of conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the Health Care Statements.

As defined in the proposed order, a "qualified clinically-integrated joint arrangement" also must satisfy two conditions. First, all physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of

interdependence and cooperation among physicians, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. This definition also reflects the analysis contained in the Health Care Statements.

Paragraph II's provisos, as they apply to Dr. Guese and Ms. Brauchler, also provide that Paragraph II does not prohibit them from facilitating an agreement solely between physicians who are part of the same medical group practice. The proposed order defines such a practice as a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph III prohibits Ms. Brauchler, for a period of three years, from negotiating with any payor on behalf of any current or past member of PISD, and from advising any current or past member of PISD to accept or reject any term, condition, or requirement of dealing with any payor.

Ms. Brauchler is not prohibited from performing legitimate "messenger" services, including with respect to PISD. As noted above, a properly constituted messenger can efficiently facilitate the establishment of physician-payor contracts and avoid fostering unlawful agreements among the participating physicians. As set forth in the proposed complaint, however, while Ms. Brauchler purported to operate as a legitimate messenger, in practice she fostered anticompetitive physician agreements by negotiating directly with payors for higher fees on behalf of PISD's entire membership, and by advising PISD's members collectively to reject various payor offers and to engage in concerted refusals to deal. For this reason, Paragraph III is a necessary and appropriate supplement to Paragraph II's provisions. Under the proposed order, Ms. Brauchler may serve as PISD's messenger, but, pursuant to Paragraph III, may not negotiate for or advise any PISD member with respect to payor contracts.

Paragraph IV.C requires PISD to terminate, without penalty at any payor's request, current contracts with payors with respect to providing physician services. This provision is intended to eliminate the effects of Respondent's anticompetitive concerted actions. The remaining provisions of Paragraph IV and Paragraphs V through VIII of the proposed order impose

obligations on Respondents with respect to distributing the proposed complaint and order to PISD's members and to offer specified persons, and reporting information to the Commission.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02-12953 Filed 5-22-02; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

GSA Standard Tender of Service (STOS), GSA National Rules Tender No. 100-D, Item 1300 Fuel Related General Rate Adjustment (FRGRA)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of amendment to STOS with request for comments.

SUMMARY: The General Services Administration (GSA), in compliance with 41 U.S.C. 418b, is publishing for comment in the attachment to this notice an amendment to Item 1300, Fuel Related General Rate Adjustment (FRGRA), of the GSA National Rules Tender No. 100-D, a part of the GSA STOS. Item 1300 offers transportation service providers (TSP's) that participate in GSA's STOS, a means to recover operating cost increases as a result of sudden and unforeseen increases in the price of diesel fuel. Correspondingly, the item provides for a downward adjustment when the price of diesel fuel suddenly or unexpectedly decreases. Without this provision, TSP's could compensate for operating expenses changes due to sudden and unforeseen fuel cost increases or decreases only twice yearly when GSA implements new transportation rates solicited under its semiannual Request for Rates Offers.

DATES: Please submit your comments by June 24, 2002.

ADDRESSES: Mail comments to the General Services Administration, Travel and Transportation Management Division (FBL), Crystal Mall Bldg. 4, Rm. 812, 1941 Jefferson Davis Highway, Arlington, VA 22202, Attn: Raymond Price (Re: Item 1300, Fuel Related General Rate Adjustment, Federal Register Notice).

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch, by phone at 703-305-7536 or by e-mail at raymond.price@gsa.gov.

SUPPLEMENTARY INFORMATION: Item 1300 inadvertently was omitted when the currently effective version of the STOS was implemented upon publication in the **Federal Register** (66 FR 63061, December 4, 2001). This **Federal Register** publication of Item 1300 serves to correct omission of Item 1300 from the December 4, 2001, version of the STOS, and to incorporate this item in the STOS in amended version that provides TSP's a means of compensating for operating expenses changes due to sudden and unforeseen fuel cost increases or decreases.

Dated: May 16, 2002.

Tauna T. Delmonico,

*Director, Travel and Transportation,
Management Division.*

Section 3—Fuel Related General Rate Adjustment

Item 1300 Fuel Related General Rate Adjustment (FRGRA)

The provisions of subsections A through E of this section govern a Fuel Related General Rate Adjustment (FRGRA) that a Transportation Service Provider (TSP) participating in this STOS (including revisions to or reissues thereof) makes to its line-haul charge.

A. General. The FRGRA provides a TSP flexibility to obtain reasonable relief from sudden and unforeseen increases in diesel fuel prices. Additionally, the FRGRA requires a TSP to correspondingly discount its line-haul charge when there are sudden and unforeseen decreases in diesel fuel prices. Since fuel related rate adjustments for gradual changes in a TSP's fuel related costs over a longer period of time are beyond the purpose of this provision, a TSP should consider gradual fuel price changes when it submits or supplements its STOS rates during a rate filing open window if such changes significantly affect the TSP's operating costs.

B. Application. The FRGRA is applicable to all GSA negotiated/accepted rate offers as well as rate offers negotiated/accepted by a Federal agency that participates in the STOS. The FRGRA may be waived or altered only by the Freight Program Management Office (FPMO) or appropriate Federal agency that negotiated/accepted the rate offer.

C. Setting Baseline. Diesel fuel price ranges and corresponding applicable percent rate adjustment levels were collaboratively established with the motor TSP industry as of November 2000. The levels specified in this section reflect current standard industry practice and will be reviewed and revised on an as-needed basis.

D. Computation.

1. *Determination of Adjustment.* Each Monday, or first working day thereafter if the Monday falls on a Federal Holiday (hereinafter referred to as "Monday"), the Department of Energy, Energy Information Administration (EIA), posts the National U.S. Average diesel fuel price. If a FRGRA is justified under subsection D of this section based on each Monday's posting, the FRGRA applies to shipments picked up the ensuing Wednesday through the following Tuesday (Note: shipment pickup date is controlling for FRGRA purposes). A TSP is responsible for monitoring diesel fuel prices each Monday using one of the sources identified below to determine whether a FRGRA will apply for the one-week period beginning the upcoming Wednesday through Tuesday of the following week.

- EIA Web site: <http://www.eia.doe.gov/>
- EIA Weekly Petroleum Status Report

- EIA Hotline: (202) 586-6966

2. *Amount of Adjustment.* If on any given Monday National U.S. Average disease fuel prices, as published in one of the sources identified in subsection D1, exceed or fall below the neutral range specified in the table under subsection D2c, a TSP will compute its FRGRA under subsection D2a or b, as appropriate.

a. If the National U.S. Average diesel fuel prices exceed the neutral range, the TSP may increase its line-haul charge by the appropriate percentage specified in the table under subsection D2c; or

b. If the National U.S. Average diesel fuel prices fall below the neutral range, the TSP must decrease its line-haul charge by the percentage specified in the table under subsection D2c.

c. *Increase/Decrease Schedule:* The following table specifies the percentage FRGRA to be applied based on diesel fuel cost per gallon:

Cost per gallon	Percent decrease	Percent increase
	1	
Neutral range:		
\$1.00-\$1.10		0
\$1.11-\$1.15		0.5
\$1.16-\$1.20		1.0
\$1.21-\$1.25		1.5
\$1.26-\$1.30		2.0
\$1.31-\$1.35		2.5
\$1.36-\$1.40		3.0
\$1.41-\$1.45		3.5
	2	

¹For each 5 cents per gallon below \$1.00, subtract 0.5%.

²For each 5 cents per gallon above \$1.45, add 0.5%.

E. *Billing Procedures.* A TSP must clearly show the amount of any diesel fuel rate adjustment, either an increase or a decrease (discount), as a separate line item on all affected freight bills, Transportation Service Orders (TSO's), or bills of lading.

[FR Doc. 02-12901 Filed 5-22-02; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Resource Related Research Project Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: AHRQ Minority Research Infrastructure Support Program.

Date: June 20-21, 2002 (Open on June 20, from 2 p.m. to 2:15 p.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Monroe Room, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research

Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594-1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 16, 2002.

Carolyn M. Clancy,
Acting Director.

[FR Doc. 02-13021 Filed 5-22-02; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02127]

Grants for Acute Care, Rehabilitation and Disability; Prevention Research Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year (FY) 2002 funds for Grants for Acute Care, Rehabilitation, and Disability Prevention Research was published in the **Federal Register** on May 8, Volume 67, Number 89, pages 30932-30935. The notice is amended as follows:

On page 30932, third column, under Section C. Availability of Funds, Paragraph 1, line 1, should be changed to read "Approximately \$900,000 is available in FY 2002* * *"

On page 30932, third column, under Section C. Availability of Funds, Paragraph 1, line 2, should be changed to read "* * * to fund approximately three to four awards"

On page 30932, third column, under Section C. Availability of Funds, Paragraph 2, line 6 through line 8, should be changed to read "The maximum funding level will not exceed \$300,000 (including both direct and indirect costs) per year or \$900,000 for the three-year project period."

On page 30933, third column, under Section f. Submission and Deadline, Paragraph 1, line 1 to 2, should be changed to read "* * * June 24, 2002, submit the application* * *"

Dated: May 17, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02-12932 Filed 5-22-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02126]

Grants for Dissemination Research of Effective Interventions to Prevent Unintentional Injuries Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year (FY) 2002 funds for Grants for Dissemination Research of Effective Interventions to Prevent Unintentional Injuries was published in the **Federal Register** on May 8, Volume 67, Number 89, pages 30935–30938. The notice is amended as follows:

On page 30936, first column, under Section C. Availability of Funds, Paragraph 1, line 1, should be changed to read “Approximately \$900,000 is available in FY 2002* * *”

On page 30936, first column, under Section C. Availability of Funds, Paragraph 1, line 2, should be changed to read “* * * to fund approximately three to four awards* * *”

On page 30936, first column, under Section C. Availability of Funds, Paragraph 1, lines 13 through 15, should be changed to read “* * * will not exceed \$300,000 (including both direct and indirect costs) per year* * *”

On page 30936, first column, under Section C. Availability of Funds, Paragraph 1, line 15, should be changed to read “* * * \$900,000 for a three year project period.”

On page 30937, first column, under Section F. Submission and Deadline, Paragraph 2, line 2, should be changed to read “* * * June 24, 2002, submit the application* * *”

Dated: May 17, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–12934 Filed 5–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02163]

Support for Civil Society Organizations Responding to HIV/AIDS in Zimbabwe; 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 Support Civil Society Organizations Responding to HIV/AIDS in Zimbabwe.

The purpose of this cooperative agreement is to provide support to civil society organizations responding to the HIV/AIDS epidemic in Zimbabwe. Civil society in Zimbabwe can and does play a critical role in strengthening the national response to the HIV/AIDS epidemic. AIDS Service Organizations (ASOs), communities of faith, educational and theatre groups and other non-governmental organizations have the ability to efficiently reach target audiences and to effectively provide education, training, prevention, clinical care and psychosocial support services.

Specifically, CDC intends to focus its support on: (1) AIDS Service Organizations (ASO) with national or regional missions and activities or cross-cutting activities that are not compatible with the District AIDS Action Committee (DAAC) Initiative; (2) ASO infrastructure or administrative support that is needed to complement a unique, supporting role that the ASO is playing as a member of a DAAC, or to complement a situation in which the ASO has received funding for program services but not for administrative support needed to properly manage those resources; and (3) faith organizations implementing activities that involve progressive involvement in major HIV/AIDS programs already underway in Zimbabwe.

B. Eligible Applicants

Applications may be submitted by nonprofit voluntary organizations, including faith-based organizations, responding to or working with HIV/AIDS in Zimbabwe and are registered under the laws of Zimbabwe.

C. Availability of Funds

Approximately \$300,000 is available in FY 2002 to fund multiple awards averaging from \$30,000 to \$50,000 per award. It is expected that the awards 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. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Antiretroviral Drugs

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in the prevention of mother to child transmission (PMTCT) cases and with prior written approval), occupational exposures and non-occupational exposures, and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements; however, applicants must perform a substantial portion of the activities, including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Federal law requires that no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient(s) 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. Strengthen the Operational Capacity of Civil Society Organizations Responding to HIV/AIDS in Specific Districts and/or Regions in Zimbabwe.

For AIDS Service Organizations

Expand and improve the capacity of ASOs and other organizations vis-a-vis operational systems (e.g., physical plant, personnel, budgeting, proposal writing, disbursement, financial oversight, reporting, evaluation) to increase the agency responsiveness to clients, donors and other constituents. For ASOs, this requested operations support should be proposed in one of four contexts:

(1) The ASO has received substantial funding to provide services, but has not been allowed funding for administrative and operational support.

(2) The ASO has been asked to play an important role in a District AIDS Action Committee (DAAC), but has not been provided with additional or sufficient resources to support those duties.

(3) The ASO has been taking on or has identified for itself a key role in mentoring or training other ASOs, DAACs, or other agents of the local response to HIV/AIDS.

(4) The ASO is playing a key role in the national response to HIV/AIDS at either a provincial or national level and, as such, is not currently meeting funding priorities of NAC or other donor agencies.

For Faith-Based Organizations

Expand and improve the capacity of pastors, ministers, priests, laity, or other members of the Denomination to effectively provide scientifically correct information that goes beyond awareness on HIV/AIDS to the populations they serve. Proposals will promote behavior change and reduction in stigma for HIV/AIDS, and reconciling accurate information with religious values while using the modes of communication that are best-accepted and most effective for the population in question. Such proposals should be linked to a source of correct information and technical assistance on HIV/AIDS, such as the Zimbabwe Council of Churches' AIDS Program, CDC Zimbabwe Office, Modeling and Reinforcement to Combat HIV/AIDS (MARCH), or other sources that should be referenced in the application.

b. Expand Prevention, Care and Support Services Provided Through Civil Society Organizations.

Strengthen key organizations at district and/or regional level to provide expanded prevention, care and support services to persons with HIV/AIDS.

2. CDC Activities

a. Collaborate with the Recipient on designing and implementing the activities listed above, including but not

limited to the provision of technical assistance to develop and implement program activities, analyses, and capacity building assistance.

b. When necessary, procure specific services, equipment and supplies, as well as other materials required to support implementation of activities covered under this agreement.

c. Monitor project and budget performance.

E. Content

Letter of Intent (LOI)

A LOI is required for this program. The narrative should be no more than two (2) double-spaced pages, printed on one side, with one-inch margins, and 12 point font. Your letter of intent will be used to help plan the review process, and should include the following information: (a) Principal organization, (b) Partners, Districts, Regions Involved, (c) 500 word (or less) abstract outlining "Central Concepts" to be developed more fully in the complete application, (d) 300 word (or less) statement of qualifications and capacity to estimate the amount of funds to be requested.

Applications

Use the information in the Program Requirements, 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 not be more than 20 double-spaced pages, printed on one side, with one-inch margins, and 12 point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 15, 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 two copies of PHS 5161-1 (OMB Number 0920-0428) Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm.

On or before August 15, 2002, submit the application to: Technical Information Management, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341-4146.

Deadline: Letters of Intent and final Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late: Letters of Intent and Applications which do not meet the above criteria will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

The criteria used to evaluate the application will include all of the criteria outlined in the recipient requirements inclusive of a plan, objectives, methods, evaluation, and budget. Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

Capacity (40 points)

Strengthening operational capacity of civil service organizations. (20 points)

Expanding prevention, care and support services provided by civil society organizations. (20 points)

Understanding the Purpose of the Overall Plan of the Application (15 points)

A cogent, brief summary of critical issues; succinct, coherent understanding of the purpose of the program announcement; and cross-cutting, cost-effective approaches to responding to the announcement.

Objectives (15 points)

Compile a translation of the general purposes of the program announcement into no more than four specific objectives, products, or outputs of the cooperative agreement.

Methods (15 points)

Enunciation of a methodology appropriate for accomplishing the objectives outlined above.

Evaluation (15 points)

A brief explanation of how internal monitoring and evaluation of this program will contribute to strengthening and institutionalization of this program during the period of the cooperative agreement.

Budget and Cost-Effectiveness (Not Scored)

Creative and convincing approaches to resource utilization (financial, personnel, computing, *etc.*) to lead to a major impact of available resources.

Human Subjects (Not Scored)

The extent to which the application adequately addresses the requirements listed in the 45 CFR part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

1. Provide CDC with original plus two copies of the quarterly progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period

4. Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

Obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in country and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

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 of the announcement.

—1AR-1 Human Subjects Requirements

—1AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

—1AR-4 HIV/AIDS Confidentiality Provisions

—1AR-12 Lobbying Restrictions

—1AR-14 Accounting System Requirements

—1AR-15 Proof of Non-Profit Status

—1AR-22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. 2421), as amended. The Catalog of Federal Domestic Assistance number is 93.118.

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 receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement & Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341-4146. Telephone: (770) 488-2782. E-mail: dpr7@cdc.gov.

For program technical assistance, contact: Mark D. Fussell, Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Zim-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor, Harare, Zimbabwe. Telephone: 263 4 796040, 796048. Fax: 263 4 796032. E-mail: fussellm@zimcdc.co.zw.

Dated: May 17, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02-12931 Filed 5-22-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02060]

National Cancer Prevention and Control Program: Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for cooperative agreements for the National Cancer Prevention and Control Program was published in the **Federal Register**

on April 23, 2002, (67 FR 19932). The notice is amended as follows:

Page 19933, Column 1, Paragraph "C. Availability of Funds," the following clarification is added: "Note: Awards under this program announcement will be on or about September 30, 2002 and will be made for a nine-month budget period for the first year which will end on June 29, 2003. As a result, the budget for the first year will reflect work for nine months, and subsequent years budgets will be for 12 months. As programs are funded on an annual basis, grantees under NCCCP and NBCCEDP may consider requesting additional funds in an amount equivalent to a 12-month award. The itemized budget for the first year must include a description and justification for the request. Breast and Cervical Cancer Programs are cautioned that the request must comply with the 60/40 distribution required under the program. This statement does not apply to NPCR programs since 3 month cost extensions under current grants for the period July 1, 2002 through September 29, 2002 were already funded with current year funding."

Page 19933, Column 1, continuation of "Eligible Applicants" Section "B.2.a NCCP" is amended to read: "Federally recognized Indian Tribal governments and Tribal organizations, urban Indian organizations and inter-tribal consortia (hereafter referred to as Tribes) whose primary purpose is to improve American Indian/Alaska Native health and which represent the Native population in their catchment area."

Page 19939, Column 2, Section "H.2. Availability of Funds" is amended to add: "Pending availability of funds, each year of the project period for this overall program announcement (September 30, 2002 to June 29, 2007) will incorporate an open season for competitive applications for the NBCCEDP component with applications due on or about February 28th. (Specific guidance with exact dates, will be provided in future years.) At that time, eligible applicants may apply."

Page 19940, Columns 2 and 3, under Section "H.3.a. Recipient Activities" is amended to add: Section H.3a(6) "If funded to provide WISEWOMAN services to NBCCEDP clients, work collaboratively across programs to ensure that each program is maximally effective and supportive of the other."

Page 19943, Column 1, Section "H.4.a.(8)(k), paragraph 2", is amended to read: In addition, programs must provide the CPT codes and schedule of fees for breast and cervical cancer screening and diagnostic services to be used by the program. In States/Tribes/

Territories where there are multiple Medicare rates and a single reimbursement rate is proposed, the applicant must provide justification for approval."

Page 19943, Column 3, Section I.2. Availability of Funds is amended to add: "Pending availability of funds, each year of the project period for this overall program announcement (September, 30, 2002 to June 29, 2007) will incorporate an open season for competitive applications for the NPCR component with applications due on or about February 28th. (Specific guidance with exact dates will be provided in future years.) At that time, eligible applicants may apply for Part I Enhancement or Part II Planning dollars but not both."

Page 19945, Column 1, continuation of Section I.3.a.(2) (1st sentence) is amended to read: "published in 'Standards for Cancer Registries', Volume II, North American Association of Central Cancer Registries (NAACCR), Spring 2002 (NAACCR record layout version 9.1)."

Page 19947, Column 2, Section "I.4.a.(7) Operational Plan" is deleted. Clarification added: "Applications should address Section I.4.a.(9) Workplan."

Page 19947, Column 3, Section I.4.a.(9)(g) is deleted. Clarification added: "Applications should address Section I.4.a.(5) Management and Staffing Plan."

Page 19949, Column 3, Section J.2.(a) is amended to add: AAR-8".

Page 19949, Column 3, Section J.2.(b) is amended to delete: AAR-2".

Page 19949, Column 3, Section J.2.(c) is amended to delete: AAR-2".

The following clarification is for information that appeared only on the CDC website. See www.cdc.gov "Funding Opportunities."

Attachment D—Screening Projections Matrix in the Appendices

The title of the second matrix is amended to read: "Number of Women to be Screened in FY 2002–2003 by Characteristics."

Dated: May 17, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–12933 Filed 5–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0447]

Determination That Ardeparin Sodium Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ardeparin sodium injection (Normiflo) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ardeparin sodium injection.

FOR FURTHER INFORMATION CONTACT: David Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5605.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Ardeparin sodium injection (Normiflo) was the subject of approved NDA 20–227, formerly held by Wyeth-Ayerst and then by Pharmacia & Upjohn. Normiflo is a low molecular weight heparin indicated for the prevention of deep vein thrombosis which may lead to pulmonary embolism following knee replacement surgery. FDA received a request from Pharmacia & Upjohn, dated May 22, 2001, to withdraw approval of NDA 20–227 for Normiflo injection in accordance with 21 CFR 314.150(c). Following Pharmacia & Upjohn's request, Normiflo was moved from the prescription drug product list to the "Discontinued Drug Product List" section of the Orange Book. Approval of the application was withdrawn on February 11, 2002 (67 FR 6264).

In a citizen petition dated September 19, 2001 (Docket No. 01P–0447/CP1), submitted under 21 CFR 10.30, John W. Herr requested that the agency determine whether ardeparin sodium injection was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Normiflo was not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that Normiflo was withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined in this notice, ardeparin sodium injection approved under NDA 20–227 was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Normiflo (ardeparin sodium injection) in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Normiflo (ardeparin sodium

injection) may be approved by the agency.

Dated: May 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-12874 Filed 5-22-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D-1563]

Guidance for Industry on Carcinogenicity Study Protocol Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Carcinogenicity Study Protocol Submissions." This document is intended to provide guidance on the types of information the Center for Drug Evaluation and Research (CDER) relies on when evaluating protocols for animal carcinogenicity studies.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD-24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5476.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Carcinogenicity Study Protocol

Submissions." In conjunction with the reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA), FDA agreed to specific performance goals (PDUFA goals) for activities associated with the development and review of products in human drug applications. The PDUFA goals related to special protocol assessment and agreement provide that, upon request, FDA will evaluate within 45 calendar days certain protocols and issues relating to the protocols to assess whether they are adequate to meet scientific and regulatory requirements identified by the sponsor. Protocols for animal carcinogenicity studies are eligible for this special protocol assessment. This guidance is intended to facilitate the agency's review of protocols for animal carcinogenicity studies by informing sponsors of the types of information the agency relies on during its evaluation of such protocols. A draft guidance of the same name was made available for public comment in a notice published in the **Federal Register** of November 7, 2000 (65 FR 66757). This guidance contains only minor changes for clarification.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on carcinogenicity study protocol submissions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: May 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-12872 Filed 5-22-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year 2002 competitive Cooperative Agreements for health workforce research.

Purpose

The purpose of these Cooperative Agreements is to conduct research that will contribute to: (1) The development of information describing the current status of the health professions workforce and (2) the analysis of fundamental health workforce related issues. These Cooperative Agreements will support a wide range of projects designed to address health workforce issues at the National, Regional and State levels.

Authorizing Legislation

These Cooperative Agreements are governed by section 761 of Title VII of the Public Health Service Act, as amended, which authorizes the development of information describing the health professions workforce and analysis of workforce related issues and necessary information for decision-making regarding future direction in health professions and nursing programs in response to societal and professional needs. Section 761 also authorizes the development of a non-Federal analytic and research infrastructure for health workforce data collection and analysis.

Federal Role

The Federal role in the conduct of these cooperative agreements allow for substantial Federal programmatic involvement in the planning and development of and the reports resulting from these studies. The Bureau of Health Professions (BHP) program officer may be assisted in this effort by program staff of the BHP divisions. The Federal Government involvement will include:

- (a) Participation in the approval of study protocols and methodologies;
- (b) Providing information about issues that are relevant to Federal policy makers or issues of particular national interest;
- (c) Consultation regarding sub-contracts awarded under these cooperative agreements;
- (d) Assistance in supplying data relevant to the studies or in identifying sources of such data, including other Federal agencies, or other public and private organizations; and
- (e) Assistance in the dissemination of the results and, if appropriate, participation in their publication in peer-reviewed journals.

Eligible Applicants

Eligible applicants are State or local governments, health professions schools, schools of nursing, academic health centers, community-based health facilities, and other appropriate public or private non-profit entities, including faith-based organizations.

Review Criteria

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits and are listed below. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged by the reviewers and are as follows:

1. The degree to which an applicant specializes in health workforce research. An applicant will be considered as specializing in health workforce research through identification of its mission, health workforce research accomplishments, and dedicated staff to health workforce research.
2. The degree to which the applicant demonstrates State and National experience and accomplishments in health workforce issues and research directly supporting the BHP National Center for Health Workforce Analysis and the BHP priorities: Health workforce distribution, racial/ethnic diversity of the health workforce, geriatrics, and genetics. Experience and accomplishments can be demonstrated through past or currently funded research.
3. The degree to which the applicant has health workforce research experience relevant to the proposed research project. For example, for a proposed research project that focuses on a given geographic area such as the US-Mexico border, the applicant should demonstrate experience in conducting US-Mexico border health workforce research. In terms of workforce

discipline-specific studies, the applicant should demonstrate experience in conducting research on the given discipline.

4. The degree to which the applicant's proposed research includes:

- a. A well-developed background statement
- b. Clearly stated research objectives
- c. Clearly stated project activities and methodology
- d. A well-developed, reasonable management plan that will enable the successful completion of the project.

Application Requests, Availability, Dates and Addresses

Application kits will be available upon request on May 1, 2002. Applicants may request the application kits by contacting the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland, 20879, by calling at 1-877-477-2123, by fax at 1-877-477-2345, or by e-mail at hrsaga@hrsa.gov. Application materials will also be available for downloading via the World Wide Web at: <http://www.hrsa.gov/grants.htm>. In order to be considered for competition, applications must be received by mail or delivered to the HRSA Grants Application Center by no later than June 19, 2002. Applications received after the deadline or sent to any address other than the address above, will be returned to the applicant and not processed.

Estimated Project Period

The estimated project period for each of the Cooperative Agreements is one year with an approximate award date of September 30, 2002.

Project Descriptions

Understanding International Medical Graduates (IMGs) 93.900

The purpose of this cooperative agreement is to collect data and information that will describe IMGs—who they are, where they came from, their visa status, role in addressing needs for healthcare providers in HPSA's and how long they stay in underserved areas. It will also study the impact of September 11 on the number of J-1 waivers.

Estimated award: \$250,000.

Role and Limitations of Telemedicine in Improving "Access" 93.900

The purpose of this cooperative agreement is to conduct a comprehensive analysis of telemedicine in rural and other underserved areas. It will also identify the issues and barriers in the implementation of telemedicine

and evaluate and research successful models to identify best practices.

Estimated award: \$200,000.

Supply, Demand and Workforce Issues for 25 Allied Health Occupations 93.900

The purpose of this cooperative agreement is to provide projections of supply and demand for and an analysis of allied health occupations, including Diagnostic Medical Sonographer, Dietetic Technician, EMT-Paramedics, Medical Assistant, Nuclear Medicine Technologist, and Surgical Technologist. Applicant may propose and justify additional disciplines to be included.

Estimated award: \$275,000.

Clinical Laboratory Sciences Workers Shortage Study 93.900

The purpose of this cooperative agreement is to analyze data on medical laboratory personnel including demographics, employment, education, employment issues, and assess supply and demand for shortages. The study will define the magnitude of laboratory personnel shortage and identify major contributing factors influencing the supply and demand of laboratory personnel. The study will describe impact of shortage on the health care system.

Estimated award: \$160,000.

Supply, Demand, Use of Licensed Practical Nurses (LPNs) 93.900

The purpose of this cooperative agreement is to provide a better understanding of the supply, demand, distribution and utilization of LPNs (including their ability to substitute for registered nurses) and to develop recommendations for the education and utilization of LPNs.

Estimated award: \$275,000.

Develop National Database on Nurse Practitioners 93.900

The purpose of this cooperative agreement is to design and promote the development of a national nurse practitioner database that documents the number and characteristics of nurse practitioners, including demographic, job activity, and work-setting data. The database should be designed to provide the basic research information needed to analyze the nurse practitioner workforce.

Estimated award: \$125,000.

Adequacy of Current and Future Dental Workforce 93.900

The purpose of this cooperative agreement is to: (1) assess the adequacy of the current dental workforce supply and expected demand and (2) project the demand of dental workforce.

Estimated award: \$100,000.

Assessing Variations in Retirement Plans of Physicians by Gender, Race, Specialty, Age and Other Factors 93.900

The purpose of this cooperative agreement is to assess variations in the retirement plans of physicians by: gender, race specialty, age, practice location (urban, suburban and rural) and by location of medical school (International Medical Graduate versus U.S. Medical Graduate).

Estimated award: \$50,000.

Assessing Disparities of the Health Workforce Distribution in Underserved Areas of Texas and New Mexico Border Regions 93.900

The purpose of this cooperative agreement is to determine the applicability of recent developments in Geographic Information Systems (GIS) technology and studies to more clearly assess and monitor shortages and health workforce needs in underserved areas of the U.S./Mexico Border region of Texas and New Mexico. Estimated award: \$148,000.

Genetic Issues of the Hispanic Border Population 93.900

The purpose of this cooperative agreement is to: (1) Characterize testable genetic issues along the border, (2) characterize genetic services in rural and underserved areas of the Texas and U.S./Mexico border region, and (3) identify the roles of health professionals in providing genetic services in rural areas of Texas and border regions.

Estimated award: \$100,000.

Improving Health Professions Education Programs Planning in New York 93.900

The purpose of this cooperative agreement is to develop a model collaboration between a Regional Workforce Study Center and a university to better plan health professions/nursing education programs. The Regional Workforce Center will use its knowledge about health workforce supply, demand and issues to advise educational program planners.

Estimated award: \$50,000.

The Workforce Investment Act of 1998: Are States Targeting the Health Workforce? 93.900

The purpose of this cooperative agreement is to identify and enumerate the goals and strategies that State Workforce Reinvestment Boards have identified or employed in an effort to develop the health care workforce. The analysis should include all States and Territories.

Estimated award: \$100,000.

Health Workforce Needs in the U.S. Virgin Islands 93.900

The purpose of this cooperative agreement is to evaluate the health workforce needs in the U.S. Virgin Islands as a first step in assuring access to high quality health care.

Estimated award: \$50,000.

Additional Information

For programmatic information, please contact Sarah Richards (phone 301-443-5452 or via email at srichards@hrsa.gov) or Lou Kuta (phone 301-443-6634 or via e-mail at lkuta@hrsa.gov).

Paperwork Reduction Act

The Standard application form PHS 398, PHS Grant Application, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0925-0001.

The Cooperative agreements described in this announcement will not involve data collection activities that fall under the purview of the Paperwork Reduction Act of 1995.

Dated: May 17, 2002.

Elizabeth M. Duke,
Administrator.

[FR Doc. 02-12928 Filed 5-22-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Rural Access to Emergency Devices Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately \$12,500,000 will be available for fiscal year (FY) 2002 grants, technical assistance, and program evaluation for the purchase, placement and training in the use of automated external defibrillators (AEDs) and related activities in eligible rural areas. HRSA estimates that approximately 50 awards will be made to community partnerships, in collaboration with State Offices of Emergency Medical Services, for FY 2002. These grants will be awarded under the authority of Public Law 106-505, Title IV—Cardiac Arrest Survival, Subtitle B—Rural Access to

Emergency Devices, 42 U.S.C. 254c note. The Office of Rural Health Policy will administer the Rural Access to Emergency Devices Grant Program.

DATES: All applicants interested in applying for funding under this program are to fax or mail a letter of intent to the Office of Rural Health Policy by May 27, 2002, at fax number (301) 443-2803. A copy of this letter of intent must also be faxed or mailed to the State Office of Emergency Medical Services by this same date. The letter of intent need only include the lead applicant's organizational name, proposed number of AEDs requested and a proposed listing of those in their community partnership. The deadline for receipt of applications is July 15, 2002. Applications will be considered on time if they are either received on or before the deadline date in the HRSA Grants Application Center or postmarked on or before the deadline date. Any changes to the aforementioned dates will be posted on the Office of Rural Health Policy homepage at <http://www.ruralhealth.hrsa.gov>.

ADDRESSES: To receive an application kit, applicants may telephone the HRSA Grants Application Center at (877) 477-2123 (877-HRSA-123) or the application forms can be downloaded via the Web at <http://www.ruralhealth.hrsa.gov/funding.htm>. The instructions for preparing the applications will be included with the grant guidance as part of the grant application kit. The Rural Access to Emergency Devices Grant Program uses PHS Forms 424 and 5161 for applications. Applicants must use the formal title "Rural Access to Emergency Devices Grant Program" and CFDA number 93.259 when requesting applications. The CFDA is a Government-wide compendium of enumerated Federal programs, projects services, and activities that provide assistance. All applications must be mailed or delivered to the Grants Management Officer, Office of Rural Health: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879; telephone (877) 477-2123. This notice will appear in the **Federal Register** at http://www.gpo.gov/su_docs/aces/aces140.html and the Office of Rural Health Policy homepage at <http://www.ruralhealth.hrsa.gov/>.

FOR FURTHER INFORMATION CONTACT: Evan Mayfield, Office of Rural Health Policy, HRSA, Room 9A-55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, or email address ruralaed@hrsa.gov, telephone number

(301) 443-0835 and fax number (301) 443-2803.

SUPPLEMENTARY INFORMATION:

(1) Program Background and Objectives

Rural Access to Emergency Devices Act, 42 U.S.C. 254c note, authorizes grants to community partnerships to provide for the purchase, placement, and training in the use of automated external defibrillators (AEDs) and related activities in eligible rural areas. An applicant must be a multi-county, regional or Statewide consortium of rural community organizations applying as a community partnership. Each community partnership must have a designated lead applicant to apply as the grantee of record and act as a fiscal agent for the partnership. Funding preference ¹ will be granted to applications that are Statewide in scope. Additional funding priority ² will be given to Statewide community partnerships that identify their State Office of Emergency Medical Services as the lead applicant and/or include emergency first response entities (e.g., EMS, law enforcement and fire departments) that are currently operating without AEDs. In order to qualify as a Statewide community partnership, not every eligible county within a State need apply but must have a State Office as the lead applicant. Selected locations around the State should be identified by the lead applicant to achieve fair geographical, organizational (e.g., first response versus public access placement) and resource allocation.

The State Office of Emergency Medical Services is a logical lead applicant to disseminate funding to individual entities within the partnership given their statutory role in medical direction and regulation. Other State Offices eligible to accept these Federal grant funds include the State Office of Rural Health or a division within the Department of Health. The State Office of Rural Health is a valuable resource for consulting in public access AED placement for those areas that lack EMS services, or are located too far away to be of practical benefit to a community. Community partnerships that apply without their State Office of Emergency Medical Services as the lead applicant must work with the State Office of Emergency Medical Services on issues related to medical direction

and integration and placement of AEDs into existing EMS systems.

(2) Eligible Applicants

Applicants must apply in the form of a community partnership. Interested eligible entities are encouraged to collaborate with a wide range of other providers in developing a broad-based consortium that will make up their community partnerships. These partnerships will include local first response entities (e.g., EMS, law enforcement and fire departments). In addition, local for- and non-profit entities may be included (that have a demonstrated concern about cardiac arrest survival rates) such as, but are not limited to, community hospitals or clinics, nursing homes and senior citizen day care facilities, governmental facilities, athletic facilities, faith based organizations and schools.

All services provided by the community partnership must be provided in an eligible rural county or Rural-Urban Commuting Area zip code. All State Offices, acting on behalf of the community partnerships within their State, will be required to demonstrate how its services will be directed to the eligible rural areas. A complete listing of these eligible rural areas is available on the Web. Eligible rural counties can be found at (<http://www.ruralhealth.hrsa.gov/ruralcol.htm>) and Rural-Urban Commuting Area zip codes can be found at (<http://www.ruralhealth.hrsa.gov/ruralcoZIPII.htm>). Each is sorted by State.

(3) Review Criteria

The HRSA Grants Application Center will screen applications for completeness and responsiveness to the program guidance. Applications that are complete and responsive to the guidance will be evaluated for technical merit by a peer review group convened specifically for this solicitation and in accordance with HRSA grants management policies and procedures. As part of the initial merit review, all applications will receive a written critique. Applications recommended for funding will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Technical merit will be assessed using the following criteria:

(a) Need for AED equipment and training with documentation using any local standard enumerating average response ³ and transport times (noting

mileage to stabilizing and/or definitive care) for the response area and cardiovascular mortality prevalence rates;

(b) Plan for a need-based placement of AEDs and accessibility plan to those AEDs;

(c) Estimated AED purchasing, training, and maintenance costs (include maintenance schedule);

(d) How the grant award will be distributed within the community partnership, with identified names of who will receive funding for each entity within the partnership;

(e) An identified and approved CPR and AED training entity;

(f) Who will use the AEDs, and reference State laws regulating AED usage;

(g) Integration into local EMS systems ensuring medical direction for documented protocols of care and legal oversight; and

(h) A well-defined data collection and reporting mechanism via their State Office of Emergency Medical Services or the State Office of Rural Health should the former be unable to participate.

A further explanation of these criteria will be included in the grant guidance.

Paperwork Reduction Act

The application for the Rural Access to Emergency Devices Grant Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0920-0428.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937-0195). Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to their State Office of Emergency Medical Services no later than the Federal application receipt due date of July 15, 2002:

(a) A copy of the face page of the application (SF 424)

(b) An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served,

(2) The proposed number of AEDs to be purchased and how many people

¹ (Preference) moves those approved applicants carrying the preference ahead of approved applicants without the preference.

² (Priority) gives an application additional points during the scoring process of approved applications.

³ If there are no pre-existing records of response times, a plan on how these times will be recorded must be included.

will be trained within the community partnership,

(3) A description of the coordination planned with the appropriate State agencies (ranging from required notification of AED placement to such agency agreeing to being the lead applicant and/or fiscal agent of a Statewide community partnership should they choose to).

Executive Order 12372

This grant program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate State and local officials as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. All SPOC recommendations should be submitted to Larry Poole, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594-4260. The due date for State process recommendations is 60 days after the application deadline of July 15, 2002, for competing applications for the Rural Access to Emergency Devices Grant Program. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. See part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.

Dated: May 12, 2002.

Elizabeth M. Duke,
Administrator.

[FR Doc. 02-12481 Filed 5-16-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Extramural Research; Proposed Collection; Comment Request NIH Customer/Partner Satisfaction Survey of Modifications in Procedures for Application and Award of Research Project Grants

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NIH Customer/Partner Satisfaction Survey of Modifications in Procedures for Application and Award of Research Project Grants. *Type of Information Collection Request:* New Request. *Need and Use of Information Collection:* The Customer/Partner Satisfaction Surveys focus on the respondent's perceptions, preferences, and related opinions. The information collected in the surveys will be used by the Office of Extramural Research to evaluate procedures for the application and award of research project grants. A single study under the clearance would be a sequential review of the Modular Application/Grant process. At the outset of its implementation, the community was advised that the process would focus the efforts of investigators, institutional officials, and National Institutes of Health (NIH) staff on the science of the application and reduce administrative burden. The Modular Grant Application Process has been in effect for two years. The NIH now believes it is an appropriate time to determine how these objectives have been met. *Frequency of Response:* On occasion. *Affected Public:* Institutional Officials, Principal Investigators (PIs), Peer Reviewers, Program and Grants Management Staff, Institute Budget Officers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .334, and *Estimated Total Burden Hours Requested:* 334. Each year we may repeat the same survey with different respondents. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments/and or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, 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, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Anthony Demsey, OD, NIH, Building 1, Room 154, Bethesda, MD 20892, or call the non-toll-free number (301) 496-5127, or e-mail your request, including your address to: Demsey@OD.NIH.GOV.

Comment Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: May 16, 2002.

Regina H. White,
Director, OPERA/OER/OD/NIH.
[FR Doc. 02-13015 Filed 5-22-02; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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 Predicting Properties of Molecules

Richard Beger, Jon G. Wilkes (FDA).
DHHS Reference No. E-297-01/0 filed
07 Mar 2002.

Licensing Contact: Dale Berkley; 301/496-7735 ext. 223; e-mail:
berklejd@od.nih.gov.

The invention is a method for predicting the biological, chemical, and physical properties of molecules from their chemical shift data using through-bond and spatial distance connectivity patterns. In this method, predicted NMR chemical shift data that has already been structurally assigned in the process of developing the spectral predictions is used to construct a model that predicts biological, chemical and physical properties of the molecule. Since the structural assignments are only used to established molecular distance connectivity relationships, models can be developed for sets of molecules that do not share a common backbone geometry. In model development and use there is no molecular docking step. These models correlate particular molecules with desired "endpoints," including receptor-ligand binding, cancer effects, drug absorption and others. The new technique is a three dimensional Quantitative Structure Data-Activity Relationship (QSDAR) based on the spectrum-activity leg in the triangular structure-spectrum-activity relationship. The invention provides a quantitative relationship between spectra and certain properties or activities of the molecule, and will have important implications in the search for new therapeutic drugs. 3D-QSDAR Modelling is a very rapid objective process compared to conventional predictive methods. In comparable published results, the 3D-QSDAR model quality consistently exceeds that of conventional QSAR predictive methods.

GP41 Inhibitor

G. Marius Clore et al. (NIDDK).
DHHS Reference No. E-252-01/0 filed
17 Dec 2001.

Licensing Contact: Carol Salata; 301/496-7735 ext. 232; e-mail:
salatac@od.nih.gov.

The technology relates to a chimeric molecule, N_{CCG}-gp41, in which the internal trimeric helical coiled-coil of the ectodomain of gp41 is fully exposed and stabilized by both fusion to a minimal ectodomain core of gp41 and by engineered intersubunit disulfide bonds. N_{CCG}-gp41 inhibits HIV envelope mediated cell fusion at nonomolar concentrations with an IC₅₀ of 16 nM. It is proposed that N_{CCG}-gp41 targets the exposed C-terminal region of the gp41 ectodomain in its pre-hairpin intermediate state, thereby preventing the formation of the fusogenic form of the gp41 ectodomain that comprises a highly stable trimer of hairpins arranged in a six-helix bundle. N_{CCG}-gp41 has potential as (a) an HIV therapeutic agent that inhibits cell entry; (b) as an AIDS vaccine and; (c) as a component of a high throughput screening assay for small molecule inhibitors of HIV envelope mediated cell fusion. Antibodies have been raised against N_{CCG}-gp41 that inhibit HIV envelope mediated cell fusion. This invention is further described in J. Biol. Chem. 2001 Aug 3;276(31):29485-9.

Immunization for Ebola Virus Infection

Gary Nabel (NIAID/VRC), Anthony Sanchez.

Serial No. 60/068,655 filed 23 Dec 1997;
Serial No. 09/913,909 filed 17 Aug 2001.

Licensing Contact: Carol Salata; 301/496-7735 ext. 232; e-mail:
salatac@od.nih.gov.

The Ebola viruses, and the genetically related Marburg virus, are filoviruses associated with outbreaks of highly lethal hemorrhagic fever in humans and primates in North America, Europe and Africa. This invention relates to Ebola virus vaccines comprising nucleic acid molecules encoding Ebola viral proteins (including the transmembrane form of the viral Glycoprotein (GP), the secreted form of the viral Glycoprotein (sGP) and the viral nucleoprotein (NP)). The nucleic acid molecules of the vaccines of the invention encode structural gene products of any Ebola viral strain including the Zaire, Sudan, Ivory Coast and Reston strains as well as the genetically related Marburg virus strains. The invention relates to the nucleic acid vaccines as well as the corresponding protein vaccines. The invention also provides methods for immunizing a subject against disease caused by infection with Ebola virus.

Dated: May 3, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02-13018 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Microbiology and Infectious Diseases Research Committee, MIDRC.

Date: June 13-14, 2002.

Time: 9 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Gary S Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700-B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-496-3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-13010 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on the following meetings.

The meetings 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 on Aging Special Emphasis Panel loan repayment program.

Date: May 16, 2002.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate loan repayment program.

Place: 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Nekola, PhD, Chief of the Scientific Review Office, National Institute on Aging, Gateway Building, room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814-9692, 301-496-9666.

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.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: May 17, 2002.

Time: 11 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

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.

Name of Committee: National Institute on Aging Initial Review Group Biological Aging Review Committee.

Date: June 3-4, 2002.

Time: 6 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The

Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666, hardwoodj@mail.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group Neuroscience of Aging Review Committee.

Date: June 3-4, 2002.

Time: 7 PM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Resource Centers and Coordinating Center for Minority Aging Research (RCMARS).

Date: June 4-6, 2002.

Time: 6 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 11, 2002.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Initial Review Group. Clinical Aging Review Committee.

Date: June 13-14, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7703, markowska@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: July 1-2, 2002.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency McCormick Place, 2233 S. Martin Luther King Drive, Chicago, IL 60616.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 10-11, 2002.

Time: 5 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-13011 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of 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 a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Child Health and Human Development Council, NACHHD Council Session.

Date: June 3-4, 2002.

Open: June 3, 2002, 9:45 a.m. to 3 p.m.; Closed 03:15 p.m. to 5 p.m.

Agenda: The agenda includes: Report of the Director, NICHD; presentation by the Developmental Biology, Genetics and Teratology Branch, NICHD, and other business of the council.

Place: 31 Center Drive, Bldg. 31, Conf. Rm. 6, Bethesda, MD 20892.

Closed: June 4, 2002, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Contact Person: Yvonne T. Maddox, PhD., Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496-1848.

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.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: www.nichd.nih.gov/about/nachhd.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 17, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-13012 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 section 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 Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee; Mental Retardation Research Subcommittee Meeting.

Date: June 6-7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M St. NW., Washington, DC 20037.

Contact Person: Norman Change, PhD., Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

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. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 17, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-13013 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, "Mouse Phenotyping: Developmental & Fertility Defects".

Date: June 14, 2002.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Street, NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National

Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 496-1485.

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. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: May 17, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-13014 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Adenosine A3 Agonists for Use as Therapeutic Agents

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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 Number 5,773,423 entitled "A3 adenosine receptor agonists", filed July 13, 1994, issued June 30, 1998 and corresponding foreign applications to CanFite BioPharma, Ltd having a place of business in Petah-Tikva, Israel. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to the use of specific compositions of matter disclosed and claimed in the invention for myeloprotection, the treatment of cancer, stem cell mobilization, viral infection and arthritis.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 22, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed

to: Norbert J. Pontzer, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; telephone: (301) 496-7736, ext. 284; facsimile: (301) 402-0220, e-mail: np59n@ott.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: Current cancer treatment with chemotherapy or radiation is often accompanied by serious side effects related to cytotoxicity at non-cancerous tissue sites. Depression of bone marrow function is one of the most serious side effects in terms of patient morbidity and mortality. CanFite discovered that Adenosine A3 agonists had both a protective action in preventing neutropenia after cancer therapy and in mobilizing bone marrow stem cells for harvest. They found that these agonists also appear to have direct anti-cancer actions.

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: May 13, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.
[FR Doc. 02-13016 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treatment of Central Nervous System Disorders With a Combination of Dopaminergic and Adrenergic Antagonists

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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 Numbers 5,492,907, filed December 9, 1992, issued February 20, 1996 and 5,663,167, filed June 7, 1995, issued September 2, 1997, both entitled "Antipsychotic composition and method of treatment" to Potomac Pharma, Inc., having a place of business in Cabin John, Maryland. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to the use of methods disclosed and claimed in the invention and treatment of human central nervous system disorders.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 22, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Norbert J. Pontzer, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; telephone: (301) 496-7736, ext. 284; facsimile: (301) 402-0220, e-mail: np59n@ott.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: A significant number of patients suffering from schizophrenia prove resistant to treatment with typical neuroleptics. Scientists at the NIH discovered that the administration of an α_2 -adrenergic receptor antagonist unexpectedly enhances the therapeutic effect of typical antipsychotic neuroleptics. The

present invention provides an improved treatment for patients suffering from serious psychotic mental illness who have proven resistant to treatments with known typical antipsychotic neuroleptics alone.

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: May 13, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.
[FR Doc. 02-13017 Filed 5-22-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2002 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Ecstasy, Other Club Drugs, Methamphetamine and Inhalant Prevention Intervention Cooperative Agreements (SP 02-001), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of awards	Project period
Ecstasy, Other Club Drugs, Methamphetamine and Inhalant Prevention Intervention Cooperative Agreements.	July 10, 2002	\$4,000,000	12	1 year.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106-310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161-1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161-1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20847-2345, Telephone: 1-800-729-6686.

The PHS 5161-1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: <http://www.samhsa.gov>

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: Congress has authorized the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention to announce the availability of Fiscal Year 2002 funds for cooperative agreements for developing, implementing and pilot testing Ecstasy, and other Club Drugs and Methamphetamine and Inhalant Prevention Interventions.

Applicants may address either one of the following topics:

- Ecstasy and other club drug prevention interventions.
- Methamphetamine and/or inhalant prevention interventions.

Eligibility: Units of State and local governments or Indian tribes and tribal organizations, and domestic private non-profit organizations may apply.

These organizations can include:

- Community-based organizations
- Managed care and other health care delivery systems
- Universities and colleges
- Faith-based organizations
- City/county government units
- Local law enforcement agencies
- Other public and non-profit private entities

Availability of Funds: Approximately \$4 million will be available for one year. Approximately 12 awards will be made in total costs (direct and indirect) for up to \$350,000 for one year.

- About \$2 million for 6 awards will be allocated to ecstasy and other club drug prevention interventions.

- About \$2 million for 6 awards will be allocated to methamphetamine and/or inhalant prevention interventions.

Period of Support: Awards may be requested for one year.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored

Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic

Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Soledad Sambrano, Ph.D. Or Pamela C. Roddy, Ph.D., Center for Substance Abuse Prevention, Substance Abuse and Mental Health, Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-9110, E-Mail: ssambran@samhsa.gov, proddy@samhsa.gov.

For questions regarding cooperative agreement management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane,

Rockville, MD 20857, (301) 443-9666, E-Mail: shudak@samhsa.gov.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy

Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products.

In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as

implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 9, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02-13026 Filed 5-22-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for a cooperative agreement for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, State Mental Health Data Infrastructure Grants (SM 02-015), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of awards	Project period
State Mental Health Data Infrastructure Grants	July 24, 2002	\$550,000	7	3 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106-310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161-1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161-1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015, 800-789-2647.

The PHS 5161-1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: <http://www.samhsa.gov>.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to

apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), announces the availability of fiscal year (FY) 2002 funds for State Mental Health Data Infrastructure Grants for State Uniform Reporting.

The purpose of this program is to develop and sustain State and community data infrastructure that helps promote comprehensive, community-based systems of care for all children and adults with mental illness or at risk of developing mental illness. Information systems are important tools to improve accountability, increase access, target resources, and continuously improve quality of care.

In this announcement, four grants to State Mental Health Authorities (SMHAs) and three grants to the Mental Health Authority in U.S. Territories are available for developing infrastructure for future data compilation of the Uniform Data Reporting under the Block Grant Program, to be reported as part of the CMHS Block Grant Application. Developing data capacity for the CMHS 16-State Indicator Pilot Grant program is also part of the effort for States that can complete Uniform Reporting Measures.

The grant project is a collaborative effort of the Survey and Analysis Branch and the State Planning and Systems Development Branch, within the Division of State and Community Systems Development.

Eligibility: The following are eligible to apply:

- Applicants must be State Mental Health Authorities or the equivalent in the District of Columbia.
- Applicants must be State Mental Health Authority equivalents in U.S. Territories.

• Previous grantees in this program are not eligible to apply, as they are already conducting the activities supported by the grant.

Availability of Funds: Approximately \$550,000 will be available for seven awards. The average annual award will be \$100,000 for each State Mental Health Authority and \$50,000 for each U.S. Territory (direct and indirect).

An award may be made * * * "only if the applicant agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs * * * Non-Federal contributions * * * may be in cash or in kind, fairly evaluated, including plant, equipment, or services assisted or subsidized to any significant extent by the Federal Government may not be

included in determining the amount of such contributions." Sec 3404, Data Infrastructure Projects, Part C of title XIX of the Public Health Service Act (42 U.S.C.) 300y et. seq., amended Sec 1971, Data Infrastructure Development.

Period of Support: Annual awards may be requested for 3 years, contingent upon the availability of funds and progress achieved.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on the Mental Health Block Grant Program, contact: Nainan Thomas, Ph.D., Public Health Adviser, Room 15C-26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4257, E-mail: nthomas@samhsa.gov.

For questions on Measures and the GFA Application, contact: Olinda Gonzalez, Ph.D., Public Health Adviser, Room 15C-04, 5600 Fishers Lane, Rockville, MD 20857, E-mail: ogonzale@samhsa.gov.

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, Substance Abuse and Mental Health Services Administration, Room 13-103, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-9666, E-Mail: shudak@samhsa.gov.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by

community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- a. A copy of the face page of the application (Standard form 424).
- b. A summary of the project (PHSIS), not to exceed one page, which provides:

- (1) A description of the population to be served.
- (2) A summary of the services to be provided.
- (3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products.

In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the

prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 13, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02-12935 Filed 5-22-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for a cooperative agreement for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Cooperative Agreement to Establish a Suicide Prevention Technical Resource Center (SM 02-012), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of awards	Project period
Cooperative agreement to establish a suicide prevention technical resource center.	July 24, 2002	\$2,500,000	1	3 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106-310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

GENERAL INSTRUCTIONS:

Applicants must use application form PHS 5161-1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161-1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015, 800-789-2647.

The PHS 5161-1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: <http://www.samhsa.gov>

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), announces the availability of fiscal year (FY) 2002 funds for one cooperative agreement to establish a national suicide prevention technical resource center.

The National Suicide Prevention Technical Assistance Resource Center will facilitate outreach to stakeholders (survivors, clinicians, advocates, scientists, and Federal, State, local, and tribal organizations) through provision of information and technical assistance in suicide prevention program planning and in implementation and identification of best practices.

Eligibility: Applications may be submitted by public organizations, such as units of State, county, or local governments; by Indian tribes or tribal organizations (as defined in Section 4(b) and Section 4(c) of the Indian Self-Determination and Education Assistance Act); and by domestic private nonprofit organizations such as community-based organizations, faith-

based organizations, universities, colleges, and hospitals. These may include consortiums/partnerships of organizations brought together for the purposes of this GFA; however, only one organization may apply and be legally and fiscally responsible for the grant.

Availability of Funds: Approximately \$2,500,000 will be available per year for one award (including direct and indirect costs).

Period of Support: The project period will be for 3 years.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Robert DeMartino, M.D., Associate Director for Program in Trauma and Terrorism, Division of Program Development, Special Populations and Projects, Room 17C-26, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2940, E-mail: Rdemarti@samhsa.gov

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 630, 5515 Security Lane, Rockville, MD 20852, (301) 443-9666, E-Mail: shudak@samhsa.gov

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through

the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information: a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental

Health Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 13, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02-12936 Filed 5-22-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Targeted Capacity Expansion Grant Program Funding Decisions

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice regarding SAMHSA/CSAT's funding decision-making process, interest in making grant awards to eligible entities in States that do not currently have CSAT Targeted Capacity Expansion funding, and intent to revise Program Announcement.

This notice is to inform the public that it is SAMHSA/CSAT's intent to ensure the broadest possible distribution of Targeted Capacity Expansion program funds across the United States. Therefore, the number of awards to applicants from any one State may be limited in order to ensure that applicants from States with few or no grant awards will have an opportunity to receive funding for proposed projects that are deemed worthy of funding via the peer and National Advisory Council review processes.

This notice is also to inform the public that SAMHSA/CSAT is interested in receiving applications from units of local (cities, towns, counties) governments and Indian Tribes and tribal organizations in States that do not currently have a Targeted Capacity Expansion award. States in which no eligible entities currently have an award are: Delaware; Georgia; Hawaii; Kansas; Minnesota; Nevada; Utah; U.S. Virgin Islands; and Vermont.

Eligibility and programmatic requirements for the Targeted Capacity Expansion program are included in the funding announcement (PA 00-001)

published in the **Federal Register** on January 18, 2000. However, potential applicants should be aware that SAMHSA/CSAT intends to revise the program guidelines and reissue the Targeted Capacity Expansion funding announcement immediately following the May 10, 2002, receipt date for applications. The revised guidelines will be announced in the **Federal Register** and will be available for downloading from SAMHSA's Web site—www.samhsa.gov.

Copies of the current Part I—Programmatic Guidance for Targeted Capacity Expansion (PA 00-001) and Part II—General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements may be downloaded from SAMHSA's Web site—www.samhsa.gov, or may be ordered from the National Clearinghouse for Alcohol and Drug Information (NCADI), phone number 800-729-6686.

The program contact for additional information is: James M. Herrell, Ph.D., Center for Substance Abuse Treatment/SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2376.

Dated: May 20, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02-13025 Filed 5-22-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in June 2002.

A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and an update on the draft guidelines for alternative specimen testing and on-site testing. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will include developing the final requirements for specimen validity testing that had been published in the **Federal Register** on August 21,

2001 (66 FR 43876), and evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App.2, section 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443-6014. The transcript for the open session will be available on the following website: <http://workplace.samhsa.gov>. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Meeting Date: June 4, 2002; 8:30 a.m.—4:30 p.m.

June 5, 2002; 8:30 a.m.—Noon

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Open: June 4, 2002; 8:30 a.m.—10 a.m.

Closed: June 4, 2002; 10 a.m.—4:30 p.m.

Closed: June 5, 2002; 8:30 a.m.—Noon

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443-6014, and FAX: (301) 443-3031.

Dated: May 17, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02-13027 Filed 5-22-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4739-N-14]

Notice of Proposed Information Collection: Comment Request; Information Collection for Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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:* July 22, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, L'Infant Plaza Building, Room 8003, Washington, DC 20410; Wayne_Eddins@hud.gov; telephone (202) 708-2374 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government Sponsored Enterprises Oversight, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708-2224 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB review; as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Corporation (Freddie Mac).

OMB Control Number, if applicable: 2502-0514.

Description of the need for the information and proposed use: HUD's collection of information on Fannie Mae's and Freddie Mac's (collectively referred to as the "GSEs") business

activities is needed to measure and monitor their compliance with statutorily mandated housing goals and other statutory requirements; and to foster a continuing dialogue between HUD, the GSEs, Congress, and the public on the activities of the GSEs with respect to affordable housing and underserved mortgage market issues.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 2; the total annual number of responses is about 87; the frequency of the responses are on occasion, quarterly, semi-annually, and annually; and the total annual hours of responses are estimated at 5,632.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 14, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02-12887 Filed 5-22-02; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Wildlife Refuge System

National Wildlife Refuge System Centennial Commission Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting of National Wildlife Refuge Centennial Commission.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App1, section 10), notice is hereby given that the National Wildlife Refuge System Centennial Commission will hold its second meeting.

SUPPLEMENTARY INFORMATION: The Centennial Commission was established by Title III, Section 303 of the Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000 (H.R. 3671). The purpose of the Commission is to prepare, in cooperation with Federal, State, local, and nongovernmental partners, a plan to commemorate the centennial of the National Wildlife Refuge System beginning on March 14,

2003. They are also charged with planning a conference for the Centennial year.

The meeting will be open to the public, however, facilities and space of accommodating members of the public are limited and persons will be accommodated on a first-come first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. We will make attempts to meet any request(s) received after that date, however, the requested auxiliary aid or service may not be available due to insufficient time.

Anyone may file with the Commission a written statement concerning matters to be discussed. The Commission may also permit attendees to address the Commission but may restrict the length of the presentations, as necessary, to allow the Commission to complete its agenda within the allotted time.

Interested persons may file written statements with the Commission prior to the business meeting. Written statements may be sent to the Director, U.S. Fish and Wildlife Service, attention: Centennial Commission Coordinator at least 7 days prior to the meeting. Further information regarding the meeting may be obtained from the Division of Visitor Services and Communications, National Wildlife Refuge System, 4401 N. Fairfax Drive, Arlington, VA 22203. Telephone: 703-358-2035.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting in Room 600, 4401 N. Fairfax Drive, Arlington, VA 22203.

Matters To Be Considered

Major topics for discussion during this meeting include:

Welcome

Objectives of the meeting

Minutes of the last meeting

Addition and corrections to the agenda

Business:

1. Centennial Events and Plans
2. Conference Proposal
3. Funding opportunities and partnerships

Closing remarks (including summary of accomplishments of the meeting, date

of next proposed meeting, assignment of tasks). The Commission will also discuss organizational and administrative needs.

DATES: The meeting will be held June 18 and 19, 2002 in Washington, DC. The meeting will convene at 12 noon on June 18 and end at approximately 4:30 p.m., begin again at 9 a.m. on the June 19 and conclude at 12 noon.

ADDRESSES: The meeting is scheduled to be held at : The Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:
Laurie Shaffer, 703-358-2035.

Dated: May 8, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02-12955 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-917-02-1430-EU; AZA-32028]

Arizona, Notice of Application for Public Lands for State Indemnity Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: Under the provisions of Sections 2275 and 2276 of the Revised Statutes, (43 U.S.C. Sections 851, 852), the State of Arizona has filed application AZA-32028 to acquire public lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. Pursuant to the provisions of 43 CFR 2091.3-1 the lands described below are segregated from settlement, sale, locations or entry under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act, as applicable to each of the following:

Group I: Application for Oil and Gas Only

Gila and Salt River Meridian, Arizona

T. 9 N., R. 30 E.

Sec. 13, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 24, NE $\frac{1}{4}$.

T. 9 N., R. 31 E.

Sec. 3, Lots 1-3, inclusive, Lots 5-7, inclusive, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 10, Lots 1-4, inclusive, W $\frac{1}{2}$ E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 15, Lots 1-4, inclusive, W $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 22, Lots 3 and 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 27, Lots 1-3, inclusive, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 10 N., R. 30 E.

Sec. 25, All.

The areas described aggregate approximately 1,852.98 acres, more or less.

Group II: Application for All Minerals, including Oil and Gas

Gila and Salt River Meridian, Arizona

T. 10 N., R. 30 E.

Sec. 11, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 14, All;

Sec. 23, All;

Sec. 33, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 11 N., R. 29 E.

Sec. 21, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 23, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 11 N., R. 31 E.

Sec. 30, Lots 1-4, inclusive, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$.

T. 12 N., R. 29 E.

Sec. 24, All.

T. 12 N., R. 30 E.

Sec. 19, Lots 2-4, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 20, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;

Sec. 24, All;

Sec. 25, All;

Sec. 27, W $\frac{1}{2}$, SE $\frac{1}{4}$.

T. 12 N., R. 31 E.

Sec. 18, Lots 1-4, inclusive, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 19, Lots 1-4, inclusive, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 20, All;

Sec. 29, All;

Sec. 30, Lots 1-4, inclusive, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 31, Lots 1-4, inclusive, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$.

The areas described aggregate approximately 9,963.62 acres, more or less.

Group III: Application for Surface and Subsurface (Minerals and Oil and Gas)

Gila and Salt River Meridian, Arizona

T. 12 N., R. 29 E.

Sec. 32, E $\frac{1}{2}$ E $\frac{1}{2}$.

T. 12 N., R. 30 E.

Sec. 8, S $\frac{1}{2}$ S $\frac{1}{2}$;

Sec. 21, All;

Sec. 28, All;

Sec. 29, All;

Sec. 34, All;

Sec. 35, W $\frac{1}{2}$, SE $\frac{1}{4}$.

The areas described aggregate approximately 3,360.00 acres, more or less.

Group IV: Application for Surface Only

Gila and Salt River Meridian, Arizona

T. 12 N., R. 28 E.

Sec. 14, E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 12 N., R. 29 E.

Sec. 12, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 18, Lots 2-4, inclusive, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 20, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 21, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;

Sec. 27, All;

Sec. 28, All.

T. 12 N., R. 30 E.

Sec. 1, Lots 1-16, inclusive, SW $\frac{1}{4}$;

Sec. 3, Lots 1-12, inclusive;

Sec. 4, Lots 1-12, inclusive;

Sec. 5, Lots 1 & 2, Lots 5-8, inclusive;

Sec. 9, E $\frac{1}{2}$;

Sec. 10, All;

Sec. 11, Lots 1-16, inclusive;

Sec. 12, NW $\frac{1}{4}$;

Sec. 13, S $\frac{1}{2}$;

Sec. 14, NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 17, N $\frac{1}{2}$ N $\frac{1}{2}$;

Sec. 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 26, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 12 N., R. 31 E.

Sec. 21, All;

Sec. 22, Lots 1-4, inclusive, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 27, Lots 1-4, inclusive, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$;

Sec. 28, All;

Sec. 33, All;

Sec. 34, Lots 1-4, inclusive, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$.

The areas described aggregate approximately 11,870.55 acres, more or less.

Group V: Application for Surface and/or Subsurface (Minerals and/or Oil and Gas)

Gila and Salt River Meridian, Arizona

T. 10 N., R. 29 E.

Sec. 18, E $\frac{1}{2}$.

T. 11 N., R. 28 E.

Sec. 14, E $\frac{1}{2}$ E $\frac{1}{2}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 12 N., R. 28 E.

Sec. 10, NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 12, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 12 N., R. 31 E.

Sec. 15, Lots 1-4, inclusive, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$.

The areas described aggregate approximately 1,305.82 acres, more or less.

The segregation of the above described public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of 2 years from the date of the filing of the selection application, whichever occurs first. However, where administrative appeal or review actions have been sought pursuant to Part 4 or Subparts 2450 of 43 CFR, the segregative period shall continue in effect until publication of a notice of termination of the segregation in the **Federal Register**.

Under the provisions Sections 2275 and 2276 of the Revised Statutes (43 U.S.C. Sections 851, 852), the State of Arizona has filed application AZA-32028 to acquire public lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. Pursuant to the provisions of 43 CFR 2091.3-1 the lands described below are segregated from settlement, sale, locations or entry under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act. Inquiries concerning the segregation of the lands referenced above should be addressed to the Bill

Ruddick, Project Manager, Arizona State Office, Bureau of Land Management, 222 North Central Avenue, Phoenix, Arizona 85004.

Dated: April 25, 2002.

Carl Rountree,

Associate State Director.

[FR Doc. 02-12909 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-1320-EL, WYW155708]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Jacobs Ranch Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 44 N., R. 70 W., 6th P.M., Wyoming

Sec. 18: Lots 17, 18;
Sec. 19: Lots 5-20;
Sec. 20: Lots 1-16;
Sec. 21: Lots 1-16;
Sec. 22: Lots 1-3, 5-10, 12-15;

T. 44 N., R. 71 W., 6th P.M., Wyoming

Sec. 13: Lots 15, 16;
Sec. 23: Lots 1-16;
Sec. 24: Lots 1-16.
Containing 3962.58 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW155708): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office,

2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in *The News-Record* of Gillette, WY, once each week for two consecutive weeks beginning the week of June 10, 2002, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Jacobs Ranch Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Jacobs Ranch Coal Company, Attn: Darryl Maunder, Caller Box 3013, Gillette, WY 82717-3013, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: April 26, 2002.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 02-12913 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-1320-EL, WYW155709]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 42 N., R. 70 W., 6th P.M., Wyoming

Sec. 28: Lots 1-16.

Containing 661.57 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to delineate the location of a coal split.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW155709): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in *The News-Record* of Gillette, WY, once each week for two consecutive weeks beginning the week of June 10, 2002, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Powder River Coal Company, Attn: Karen Lohkamp, Caller Box 3034, Gillette, WY 82717-3034, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: April 26, 2002.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 02-12914 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-923-1320-EL-25-2W]

Notice of Availability of Record of Decision.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Record of Decision, Flat Canyon Coal Tract.

SUMMARY: U.S. Department of Interior, Bureau of Land (BLM), Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155. Notice is hereby given that the BLM has completed a Record of Decision (ROD) and has decided to offer a Federal coal lease tract known as "The Flat Canyon Coal Tract" through a competitive process.

The potential impacts of this decision were analyzed in a Final Environmental Impact Statement on the Pines Tract Project, which was released on January 03, 2002 by the United States Forest Service, Manti-La Sal National Forest. The lease area is located in the Manti-LaSal National Forest in Sanpete County, Utah, approximately 10 miles South West of Scofield, Utah. According to 43 CFR 3400.3-1 BLM may issue a Federal Coal lease with the consent of the National Forest with appropriate terms and conditions on the lease. BLM will issue the lease in accordance with the consent decision by the Manti-La Sal National Forest. A copy of the BLM ROD can be obtained at the BLM Utah State Office, and at the BLM Price Field Office, 125 South 600 West, Price, Utah 84501.

Dated: April 16, 2002.

Roy Turner,

Acting State Director.

[FR Doc. 02-12950 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-067-02-1610-JP-064B]

Extension of the Scoping Phase Public Comment Period for an Amendment to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Extend the Scoping Phase Public Comment Period from May 17, 2002 to May 31, 2002 for an Amendment to the California Desert Conservation Area (CDCA) Plan and Environmental Assessment (EA) in the Western Colorado section of Imperial County, CA. The Notice of Intent with the original end of the public comment period was published in the **Federal Register** on March 15, 2002 (Volume 67, Number 57, Pages 13648-13649).

DATES: The time period for accepting written comments on the scope of the proposed plan amendment has been extended from May 17, 2002 to May 31, 2002.

ADDRESSES: Comments should be sent to Greg Thomsen, Field Manager, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243-4561. Comments, including names and addresses of respondents, will be available for public review at the El Centro Field Office during normal working hours (7:45 AM to 4:30 PM, except holidays), and may be published

as part of the EA or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT:

Arnold F. Schoeck, Lead Outdoor Recreation Planner, at the above address, telephone number (760) 337-4441, or e-mail at

Arnold_Schoeck.ca.blm.gov.

Dated: May 2, 2002.

Greg Thomsen,

Field Manager.

[FR Doc. 02-12919 Filed 5-22-02; 8:45 am]

BILLING CODE 1610-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-00-1020-24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include manager's reports of field office activities; RAC subcommittee report on the planning effort for the Black Rock-High Rock Emigrant Trail National Conservation Area; RAC review and recommendations on BLM land acquisition proposals under Round III of the Southern Nevada Public Lands Management Act; RAC review and recommendations on the Walker River Basin EIS; and other topics the council may raise.

DATE & TIME: The RAC will meet on Thursday, July 25, 2002, from 8 a.m. to 5 p.m., and Friday, July 26, 2002, from 8 a.m. to 12 p.m., at the Bridgeport Ranch, Barns & Terrace Facility, 68

Twin Lakes Road off U.S. Highway 395, Bridgeport, California. All meetings will be outdoors under a tent pavilion and are open to the public. A general public comment period will be held on Thursday, July 25, 2002, at 11 a.m. A field trip to the upper portions of the Walker River Basin may be scheduled for the afternoon of Thursday, July 25, 2002, starting from the Bridgeport meeting location; details will be listed in the agenda no later than July 5, 2002.

A detailed agenda will be available on the internet by July 5, 2002, at www.nv.blm.gov/rac; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885-6107 no later than July 17, 2002.

FOR FURTHER INFORMATION CONTACT:

Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885-6107.

Dated: April 12, 2002.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 02-12908 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-1020-PG; G 02-0217]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District, Interior.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will meet at the Community Center, Christmas Valley, OR 97641 from 8 a.m. to 5 p.m., Pacific Time (PT), on Monday, July 22, 2002, and conduct a field tour to discuss Off Road Vehicle (OHV) issues, on Tuesday, July 23, 2002. Contact the BLM office listed below for exact time as the tour date approaches.

The meeting topics to be discussed by the Council will include a discussion of issues within southeast Oregon related to Steens Mountain Resource Advisory Council, North Lake Recreation Plan, Burns Steens/Andrews Resource Management Plan, Birch Creek, Fire Interface, OHV and Rangeland Assessment. Federal officials' updates, and other matters as may reasonably come before the Council. The entire

meeting is open to the public. Information to be distributed to the Council members is requested in written format 10 days prior to the start of the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m., Pacific Time on Monday, July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC may be obtained from Peggy Diegan, Support Services Supervisor/ Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473-3144, or Peggy_Diegan@or.blm.gov or from the following web site: <http://www.or.blm.gov/SEOR-RAC>.

Dated: May 2, 2002.

David R. Henderson,

District Manager.

[FR Doc. 02-12918 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-912-02-1120-PG-24-1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Meeting scheduled for June 4-5, 2002, in Price, Utah.

Primary agenda items for this meeting will include a field tour of the coal bed methane fields discussing well placement and raptor nests, artificial nests (examples in the field), current guidance and policy, USFWS recommendations, effects of efficient field development, and other related topics. We will be leaving (June 4, 8 a.m. until 5 p.m.), from the Price Field Office of the Bureau of Land Management, 125 South 600 West, Price, Utah.

A follow-up meeting will then be held on June 5, from 8 a.m.—noon, at the Holiday Inn, Conference Room, 838 Westwood Blvd., Price, Utah. We will discuss the rules and recommendations of Resource Management Plan (RMP) guidelines, RMP updates, OHV management, and a review of the FWS guidelines. From 11:30 until noon, a public comment period is scheduled where members of the public may address the Council. Written comments may be mailed to the Bureau of Land Management at the address listed below. All meetings are open to the public;

however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539-4195.

Dated: April 23, 2002.

Linda Colville,

Acting State Director.

[FR Doc. 02-12921 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-360-1220-DD]

Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim designation of roads and trails open to motor vehicle use within certain areas of the Sacramento River Bend Area of Critical Environmental Concern (ACEC).

SUMMARY: Road and trail designations and restrictions are made to implement the land use allocations for the Sacramento River Bend ACEC contained in the Redding Resource Management Plan and Record of Decision. Motor vehicles operating on public land within certain areas within the Sacramento River Bend ACEC may utilize designated roads and trails. All roads and trails on public land within one mile North of Battle Creek between Gover Road and the Coleman Forebay will be closed to motorized vehicles with the exception of the Coleman County Road. The affected public lands include all BLM managed lands within:

T.29N.R.2W.
Sec. 6 (N½);
T.30N.R.2W.
Sec. 31 S½,
Sec. 32 S½.

In accordance with 43 CFR 8341.2, notice is hereby given that all roads that are not designated for use by official BLM signs will be closed unless otherwise marked. Exceptions to this rule will be emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, and other motorized vehicles on official business specifically approved by an officer of the Bureau of Land Management.

The purpose of this designation is to provide a means by which the BLM can effectively control visitor activities

which jeopardize public safety, lands and resources.

DATES: These designations and restrictions are effective no sooner than 30 days after the date of publication and will remain in effect until modified or rescinded by the authorizing officer.

FOR FURTHER INFORMATION CONTACT: Charles Schultz, Field Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002 (530) 224-2100.

For a period of 30 days from the date of publication of this notice, interested parties may submit written comments or objections to the Field Manager, Redding Field Office at the above address.

SUPPLEMENTARY INFORMATION: Authority for these designations and restrictions is contained in CFR Title 43 Chapter II, Parts 8342. Any person who violates or fails to comply with this designation and restriction order may be subject to a fine not to exceed \$1000 and/or imprisonment not to exceed 12 months under the authority of 43 CFR 8340.0-7. The Redding Resource Management Plan and Record of Decision, approved July 1993, provides management direction for lands in the area of the Redding Field Office including the Sacramento River Bend ACEC. Additionally, the Coleman Road Vehicle Control and Riparian Protection EA# RE-99-35 (12-19-2000) and the associated decision record provided guidance and decision regarding designation and restrictions of roads and trails.

Dated: March 19, 2002.

J. Anthony Danna,

Deputy State Director, Natural Resources.

[FR Doc. 02-12927 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-200-1220-EA]

Extension of Special Rule Regarding Operation of Motorized Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of two year extension.

SUMMARY: Public notice is hereby given that implementation of a Special Rule regarding the operation of motorized vehicle designations within the Texas Creek, Penrose, Grand Canyon Hills, and Sand Gulch areas will remain in effect and is extended for two years. The change in vehicle designation for these

areas became effective May 22, 2001 (66 FR 28198). These four areas, totaling 16,355 acres, will remain in the "limited to existing roads and trails" designation until interdisciplinary planning with all affected interests occurs to determine the appropriate designated travel routes in these areas. Interdisciplinary planning is currently underway for the Penrose area and planning will begin for the other three areas in 2003. The BLM has determined that it is necessary for the current designation of "limited to existing roads and trails" to remain in effect in order to prevent unacceptable impacts to public lands and to provide management consistency to these areas while planning efforts are underway.

DATES: The extension of this Special Rule goes into effect with the publication of this notice and shall remain in effect for two years. At the end of the two year period it may be reviewed and extended, or revoked.

ADDRESSES: You may obtain additional information by any of several methods. You may mail, hand deliver, or call in your requests to: Field Manager, Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212, (719) 269-8500. You may also make requests via e-mail to: rgfo_comments@blm.gov.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Manager or Diana Kossnar, Outdoor Recreation Planner, at the address and phone number listed above, or John Nahomenuk, Outdoor Recreation Planner, 307 W. Sackett Ave., Salida, CO 81201, 719-539-7289.

SUPPLEMENTARY INFORMATION: The Special Rule provision of 43 CFR 8341.2 allows the authorized officer to close certain areas to specific types of OHV use. In the case of the Texas Creek, Penrose, Grand Canyon Hills, and Sand Gulch OHV "Open" areas, the authorized officer closed these areas to all forms of OHV use that goes off of existing travel routes. This changed the OHV designation for the areas to "limited to existing roads and trails", the same designation that is found on the surrounding public lands. The Special Rule was implemented to prevent a continuation of unacceptable impacts to soils, vegetation, wildlife, and wildlife habitat. The Royal Gorge Field Office will follow implementation of this Special Rule with amendments to the Royal Gorge Resource Management Plan. The plan amendments will be completed with full public involvement, interagency coordination and consultation as required by the BLM planning regulations (43 CFR part 1600).

This Special Rule does not apply to emergency, law enforcement, and

federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fines and/or imprisonment as defined in 18 U.S.C. 3571. Notice of this Special Rule and detailed maps of the four affected areas are posted at the Royal Gorge Field Office in Canon City and the Arkansas Headwaters Recreation Area Office in Salida.

John L. Carochi,

Associate Field Manager.

[FR Doc. 02-12912 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-013-02-1210-AA WSAS]

Limited Use Designation within Elko Field Office Wilderness Study Areas; Elko, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Limited Use designation for mechanical transport, including all motorized devices as well as trail and mountain bikes, in Wilderness Study Areas under the jurisdiction of the Elko Field Office, Nevada.

SUMMARY: The following Wilderness Study Areas are designated as Limited Use. Cedar Ridge WSA (NV-010-088); Red Spring WSA (NV-010-091); Little Humboldt WSA (NV-010-132); Rough Hills WSA (NV-010-151); South Fork Owyhee River WSA (NV-010-103A); Owyhee Canyon WSA (NV-010-106); Bluebell WSA (NV-010-027); Goshute Peak WSA (NV-010-033); South Pequop WSA (NV-010-035); and Bad Lands WSA (NV-010-184). Persons operating mechanical transport, including all motorized devices, as well as trail and mountain bikes, are limited to accessing only those boundary roads or ways existing inside a Wilderness Study Area, which were identified during the inventory phase of the wilderness review. Maps depicting those open roads within each Wilderness Study Area are available at the Elko Field Office. All other ways and roads are assumed closed. Persons with authorization to utilize the area by BLM regulations, contracts, leases or permits, may use the area described in accordance with those authorizations. Nothing in this closure effects the exercise of valid existing rights created

by a contract, right of way, lease, permit or mining claim that is carried out in accordance with the regulations under which the rights were established.

Exemptions to this order are granted for these purposes only:

(a) In emergencies and search and rescue operations;

(b) for official purposes by the BLM and other Federal, State, and local agencies and their agents when necessary and specifically authorized the BLM for protection of human life, safety, and property; for protection of the lands and their resources; and

(c) to build or maintain structures and installations authorized as grandfathered uses or valid existing rights in the Interim Management Policy for Lands under Wilderness Review, as long as such use of vehicles is determined to satisfy the nonimpairment criteria and is only along routes authorized and specified by the BLM.

EFFECTIVE DATE: This designation is official on March 1, 2002 and will remain in effect until either rescinded by the authorizing official, or until Resource Management Plans for both Elko and Wells Resource Areas are amended, or until such time as Congress either designates the WSA as Wilderness or releases it for other purposes.

FOR FURTHER INFORMATION CONTACT:

Helen Hankins, Elko Field Office Manager, 3900 Idaho Street, Elko, NV 89801. Telephone (775) 753-0200.

SUPPLEMENTARY INFORMATION: The BLM's Off Road Vehicle Regulations, 43 CFR 8342.1., require that the BLM establish off-road vehicle designation of areas and trails that meet the non-impairment mandate. It is the BLM's policy that cross-country vehicle use in the WSAs does cause the impairment of wilderness suitability. The BLM policy establishing what is necessary to prevent such impairment is set forth in BLM Manual Handbook H-8550-1, Interim Management Policy for Lands Under Wilderness Review.

The Limited Use designation is established to comply with the "nonimpairment" mandate established in the Interim Management Policy for Lands Under Wilderness Review, BLM Manual Handbook H-8850-1.

Helen M. Hankins,

Field Manager.

[FR Doc. 02-12904 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[OR-056-1220-DG; GP-02-0088]****Closure Notice; Notice of Permanent Motor Vehicle Restriction on Public Lands; Deschutes/Crook Counties, OR**

AGENCY: Bureau of Land Management, Prineville District, Deschutes Resource Area/Field Office.

ACTION: Notice is hereby given that all motorized use within the Badlands Wilderness Study Area (WSA), Crook and Deschutes County, Oregon, is restricted to designated routes only. The Badlands WSA is located approximately 15 miles east of Bend, Oregon, in Crook and Deschutes Counties. Specifically, this closure order applies to all public lands within the following perimeter description described below.

Perimeter Description: Beginning at the intersection of Alfalfa Market and Dodds County Roads, then south on Dodds Road to State Highway 20, then southwesterly on Highway 20, to its intersection with BLM Road #6521 then north easterly on road #6521, to its intersection with BLM road #6520-B, then continuing northeasterly on road #6520-B, to its intersection with a high voltage electrical transmission line with steel support towers, then north along this power line to its intersection with another power line supported by double wood poles, then northwesterly along this power line to its intersection with Alfalfa Market Road, then west on Alfalfa Market Road to point of beginning.

SUMMARY: The BLM is required to restrict motorized use to designated routes on public lands within the Badlands Wilderness Study Area. This restriction is necessary for BLM to comply with a federal consent judgment between the *Central Oregon Forest Issues Committee et al. v. James Kenna, Deschutes Area Manager, Bureau of Land Management et al.*, Civil Action No. 98-29-ST (D. OR.), that was lodged with the United States District Court for the District of Oregon on November 23, 1999.

This 1999 federal consent judgement resulted from a settlement of a lawsuit between the Central Oregon Forest Issues Committee and other environmental organizations who took BLM to federal court in 1998, regarding its environmental assessment/management plan for the Millican Valley Off-Highway Vehicle Trail System. In December, 1999, the federal court requested BLM obtain public comments regarding the proposed

federal court consent judgement, which included specific motorized vehicle restrictions within the Badlands Wilderness Study Area.

Public comments were considered and reviewed by the federal court judge before the consent judgement was finalized. Routes 4,5,6,7 and 8 were specifically identified by the plaintiffs and approved by the federal court in the consent judgement. This judgement stated that motorized use in the Badlands WSA was limited to routes 4,5,6, and 7, from May 1st through November 30th, annually. Route 8 was open to motorized use year-round.

DATES: This closure will take effect on the date this notice is published in the **Federal Register**. The closure will remain in effect until BLM modifies or rescinds this order.

ADDRESSES: Bureau of Land Management, Deschutes Resource Area, 3050 N.E. 3rd Street., Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Berry Phelps, Recreation Planner, 3050 NE Third Street, Prineville, Oregon 97754. Phone: (541) 416-6723.

Discussion of the Rules: The public lands affected by this proposed motorized vehicle restriction are all lands administered by the BLM within the Badlands WSA. Signs will be posted to identify designated routes. Motorized designated routes will be identified on user maps that will be available at key entrances into the Badlands WSA. A map of the proposed motorized restriction area is available from the Prineville District BLM office, 3050 N.E. 3rd. Street, Prineville, Oregon, 97754.

Prohibited Acts: Under 43 CFR 8364.1. The Bureau of Land Management will enforce the following rules within the Badlands Wilderness Study Area:

a. Operation of a motorized vehicle off of designated routes 4,5,6,7 and 8 is prohibited.

b. Operation of a motorized vehicle on routes 4,5,6, and 7, from December 1st through April 30th is prohibited.

Exemptions: This closure notice does not effect the following public lands:

1. Public land west of wood pole power line in Sections 20 and 29, T. 17S, R15E, W.M., and
2. Public lands north and/or west of the Central Oregon Irrigation District Canal in Sections 3 and 4, T. 18S, R. 14E., and Sections 26,33,34, and 35 in T. 17S, R14E, W.M.

This closure does not apply to persons who are exempt from these rules that include any Federal, State, or local officer or employee in the scope of his or her duties, members of any

organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

Penalties: The authorities for this closure are section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8364.1). Any person who violates this closure may be fined no more than \$1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the higher fines provided for by 18 U.S.C. 3571.

Dated: January 31, 2002.

A. Barron Bail,

District Manager.

[FR Doc. 02-12917 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[UTU-75667]****Utah; Proposed Reinstatement of Terminated Oil and Gas Lease**

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease UTU-75667 for lands in Emery County, Utah, was timely filed and required rentals accruing from October 1, 2001, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$10 per acre and 16-2/3 percent, respectively. The \$500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU-75667, effective October 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rate cited above.

Robert Lopez,

Chief, Branch of Minerals Adjudication.

[FR Doc. 02-12922 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[NV-930-1430-ET; N-74293]****Termination of Segregation; NV****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of termination of segregation.

SUMMARY: This action terminates a portion of the segregation known as the Woodhills Land Exchange. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: June 24, 2002.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301-9408.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf, Realty Specialist, at the above address or telephone (775) 289-1852.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 1 of Bureau of Land Management Manual 1203 dated November 25, 1998, that portion identified below as being part of the Woodhills Exchange is hereby terminated in its entirety:

Mount Diablo Meridian, NevadaT. 9 N., R. 67 E., Section 12 S $\frac{1}{2}$

13 All

24 E $\frac{1}{2}$ 25 E $\frac{1}{2}$

T. 8 N., R. 68 E. Section

6 All

7 All

T. 9 N., R. 68 E. Section

6 W $\frac{1}{2}$

7 All

18 All

19 All

30 W $\frac{1}{2}$

31 All

The area described contains 4,480 acres in Lincoln County.

The classification made pursuant to the Act of October 21, 1976, amended, and segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. The segregation request has been withdrawn, therefore, is no longer needed. At 9 a.m. on June 24, 2002, the lands described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the

requirements of applicable law. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 11, 2002.

Jeffrey A. Weeks,*Assistant Field Manager, Nonrenewable Resources.*

[FR Doc. 02-12903 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-HC-P**DEPARTMENT OF INTERIOR****Bureau of Land Management****[AK-024-5440-L015; F-07357; F-93209]****Airport Conveyance; Fairbanks, AK****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action.

SUMMARY: On February 1, 2001, the Federal Aviation Administration (FAA) determined that public land adjacent to the Fairbanks International Airport is necessary for airport operations and requested that the Bureau of Land Management (BLM) convey the land to the State of Alaska Department of Transportation and Public Facilities. BLM proposes to convey title to the State as requested. This Notice of Realty Action is necessary pursuant to BLM regulations.

DATES: Comments regarding the proposed conveyance may be submitted on or before July 8, 2002.

ADDRESSES: Written comments may be submitted to the Field Manager, Northern Field Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT:

Betsy Bonnell, at (907) 474-2336, or by e-mail at Betsy_Bonnell@blm.gov.

SUPPLEMENTARY INFORMATION: The parcel proposed for conveyance is described as follows:

Fairbanks Meridian, Alaska

T. 1 S., R. 2 W., Sec. 23, NE $\frac{1}{4}$ NE $\frac{1}{4}$, and Sec. 24, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ Containing 55.31 acres.

The land is located at the corner of Anderson and Dale Roads, adjacent to the airport post office.

The FAA has determined that this public land is reasonably necessary for airport purposes. The State intends to lease the land and possibly use it for parking expansion. BLM has notified the FAA that conveyance of the land to the State of Alaska is not inconsistent with the needs of the Department of the Interior and that BLM proposes to convey title to the State under section 516 of the Airport and Airway Improvement Act of September 3, 1982 and the regulations at 43 CFR part 2640.

The above-described lands have been and remain segregated from all appropriation under the public land laws, including the mining and mineral leasing laws, by Public Land Order 2550, dated December 6, 1961, for use by the FAA.

Rights-of-way for existing roads will not be reserved as title will merge. However, conveyance of the land will be subject to valid existing rights and the following terms and conditions:

1. A right-of-way for ditches or canals will be reserved to the United States;
2. All minerals shall be reserved to the United States.

A complete list of the terms and covenants requested by the FAA administrator and those required for the protection of the Department of the Interior is available for review by interested persons at the address listed above.

Authority: 49 U.S.C. 2215.

Dated: April 10, 2002.

Robert W. Schneider,*Field Manager.*

[FR Doc. 02-12905 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-JA-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[CO-170-1430-EQ; COC 64592]****Notice of Realty Action****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action, closure of public land.

SUMMARY: The following lands have been temporarily closed to public use under Federal regulations at Title 43 Code of Federal Regulations § 8364.1.

A portion of Federal lands within sections 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, of protracted Township 42 N., R.7 W., New Mexico Principal Meridian. Further described as: beginning at a

point 0.5 mile north of Cascade Gulch and extending northeasterly along the east side of Colorado State Highway #110A to the junction of San Juan County #52, thence southeasterly along the Middle Fork of Cement Creek to the divide between the Middle Fork Cement Creek and the South Fork of the Animas River, thence south along the ridge line forming the Colorado Basin to Storm Peak, thence west along a descending ridge line to the tree line between Grassy Gulch and Cascade Gulch, thence northwest to the point of beginning.

The described lands are closed to general public use until June 15th, 2002.

FOR FURTHER INFORMATION CONTACT:

Charlie Higby, BLM Realty Specialist, (970) 385-1374; San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado 81301.

SUPPLEMENTARY INFORMATION: The following are exempt from the closure: the San Juan County Sheriff; members of San Juan County Search and Rescue on official business, Colorado Department of Transportation and; Core Mountain Enterprises, LLC performing avalanche data collection work under BLM permit number *COC 64592*.

Persons with valid existing rights may continue to exercise those rights under the terms and conditions of their contract, lease, permit, right-of-way grant, or mining claim and, must notify Core Mountain Enterprises of their plans to be in the closure area prior to exercising those rights.

The access closure is necessary to protect the general public during periods of avalanche data collection work as authorized under BLM permit *COC 64592*.

Any person who fails to comply with a closure or restricted use order issued under this subpart may be subject to penalties provided for at Title 43 Code of Federal Regulations § 8360.0-7, including a fine not to exceed \$10,000 and/or imprisonment not to exceed 12 months.

Calvin N. Joyner,

Center Manager, San Juan Public Lands Center.

[FR Doc. 02-12926 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-1430-ES; N-63278]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land in Elko County, Nevada, has been examined and identified as suitable for classification for lease, with the option to purchase after development, under the provisions of the Recreation and Public Purpose (R&PP) Act of June 14, 1926, as amended, (43 U.S.C. 869 *et seq.*). The Elko County School District proposes to use the land for construction of a middle school facility.

Mount Diablo Meridian, Nevada

T. 34 N., R. 55 E.

Section 8, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 55.00 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The land would not be offered for lease until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The Elko County School District has made application to acquire the land to construct a new middle school facility. Due to the dramatic growth over the last few years, all four of the existing elementary schools and Elko Junior High School are experiencing overcrowding. The action to build a new school would help to alleviate that situation. The lease/patent, when issued, would be subject to the provisions of the Recreation and Public Purpose Act, 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 and 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 application law and

such regulations as the Secretary may prescribe.

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 except for lease or conveyance under the Recreation and Public Purpose Act, the general mining laws, and leasing under the mineral leasing laws. The segregative effect will terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

For a period of 45 days from the date of this publication in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the land to the District Manager, Elko Field Office, 3900 E. Idaho St., Elko, Nevada, 89801. The State Director, who may sustain, vacate or modify this realty action, will evaluate any objections. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Classification of Comments:

Interested parties may submit comments involving the suitability of the construction of a new middle school. 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 middle school facility.

Dated: April 16, 2002.

David L. Stout,

Associate Field Manager, Elko Field Office.

[FR Doc. 02-12902 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-040-1430-EU; UTU-79247]

Notice of Intent and Notice of Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent for a proposed plan amendment and Notice of Realty Action (NORA) for conveyance of public lands.

SUMMARY: This Notice of Intent is to advise the public that the Bureau of Land Management (BLM), Cedar City Field Office intends to consider a proposal which would require amending an existing planning document. The BLM is proposing to amend the Cedar, Beaver, Garfield, Antimony Resource Management Plan, approved October 1, 1986. The purpose of the proposed plan amendment would be to identify certain public land as suitable for disposal by direct sale under the provisions of Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1713). The public lands identified for direct sale are comprised of 20 acres located in Beaver County and are described as follows:

Salt Lake Meridian

T. 29 S., R. 8 W.,
Sec. 20, E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 29, E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.
Containing 20 acres.

This publication also constitutes a Notice of Realty Action for the conveyance of a patent for the public lands described above to Eric R. and Lisa A. Jessup by direct non-competitive sale at not less than appraised market value. The sale includes the surface estate only.

The patent, when issued, will reserve to the United States: A right-of-way (ROW) thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945) and all mineral deposits, including oil and gas, with the right to prospect for, mine, and remove the same under applicable law and such regulations as the Secretary may prescribe.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be received on or before July 8, 2002.

ADDRESSES: All comments concerning this proposed sale should be addressed to A.J. Meredith, Cedar City Field Office Manager, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

Comments, including names and address of respondents will be available for public review at the BLM Cedar City Field Office and may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public

review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written request. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land sale may be obtained from the Cedar City Field Office at the above address. Telephone calls may be directed to Ervin Larsen at (435) 865-3081.

SUPPLEMENTARY INFORMATION: The existing plan does not identify these lands for disposal. However, because of the resource values, public values and objectives involved, the public interest may well be served by sale of these lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Publication of this notice in the **Federal Register** segregates the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first. The sale will be conducted no sooner than July 22, 2002.

Dated: April 8, 2002.

Sally Wisely,
State Director.

[FR Doc. 02-12907 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-080-1430-EU, WYW-115003, WYW-148855]

Notice of Realty Modified Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale of Public Lands in Weston County, WY.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by modified competitive sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713) and the Federal Land Transaction Facilitation Act of 2000, Public Law No. 106-248,

July 25, 2000. The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

Parcel Number 1 (WYW-115003)

T. 48 N., R. 60 W.,
Sec. 7, lot 4.

39.56 acres.

Parcel Number 2 (WYW-148855)

T. 48 N., R. 60 W.,
Sec. 18, lot 5.

42.44 acres.

FOR FURTHER INFORMATION CONTACT: Bill Hill, Field Manager, BLM Newcastle Field Office, 1101 Washington Blvd., Newcastle, WY 82701, 307-746-6600.

SUPPLEMENTARY INFORMATION: This sale is consistent with BLM policies and the Newcastle Resource Management Plan. In accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the described lands are hereby classified for disposal by sale. The purpose of this sale is to dispose of two isolated parcels of public lands that have no legal access. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the BLM Newcastle Field Office, Newcastle, WY.

The parcels will be offered by modified competitive sale to only the adjoining landowners. The adjoining landowners will be required to submit proof of adjoining landownership before a bid can be accepted.

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days from the date of publication of this Notice, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity

legally capable of conveying and holding land or interests in WY.

2. Sealed bidding is the only acceptable method of bidding. A bid must be received in the BLM Newcastle Field Office by 2 p.m., July 24, 2002, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (WYW-115003) or (WYW-148855), Sale held July 24, 2002."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the bidder and the deposit shall be forfeited and disposed of as other receipts of the sale.

5. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental biddings. The designated high bidders shall be allowed to submit oral or sealed bids as designated by the Authorized Officer.

6. If any parcels fail to sell, they will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Field Office by 2 p.m. on the fourth Wednesday of each month beginning August 28, 2002. Reoffered land will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights.

Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document,

is available for review at the BLM Newcastle Field Office.

3. Harry Borgialli is the grazing lessee (GR-498041) on parcel WYW115003 and parcel WYW148855. Any conveyance will be subject to the existing grazing use of Harry Borgialli. The rights of Harry Borgialli to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. GR-498041 shall cease on September 25, 2003. The successful bidder is entitled to receive annual grazing fees from Harry Borgialli in an amount not to exceed that which would be authorized under the Federal grazing fee published in the **Federal Register**.

Classification Comments: Interested parties may submit comments regarding the classification of the land as suitable for disposal through sale.

Application Comments: For a period of 45 days from the date of this notice, interested parties may submit comments to the Field Manager, BLM Newcastle Field Office, 1101 Washington Blvd., Newcastle, WY 82701. Any adverse comments will be evaluated by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: April 19, 2002.

Bill Hill,

Field Manager.

[FR Doc. 02-12906 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-100-1430-ES; WYW-153960, WYW-154495]

Notice of Realty Action; Recreation and Public Purposes Act Classification; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following two parcels of public land located near Big Piney and Pinedale, Wyoming, have been examined and found suitable for classification for conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sublette County intends to use the lands for the existing and to expand Big Piney's shooting sports complex and to expand Pinedale's public shooting sports complex.

Sixth Principal Meridian

T. 30 N., R. 112 W.,

Section 31, Lots 3 and 4., SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 33 N., R. 109 W.,

Section 7, Lot 3.

The lands described above comprise a total of 104.33 acres.

FOR FURTHER INFORMATION CONTACT:

Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill ST., P.O. Box 768, Pinedale, WY 82941, or contact John Besse at (307) 367-5313.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The conveyances, when completed, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. A right-of-way for ditches and canals constructed under the authority of the United States. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mining leasing 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 conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, WY 82941.

The analysis may identify that an amendment to the Pinedale RMP is needed. If a plan amendment is needed, other notices, mailings, or media releases will announce a 30 day protest period on the proposed amendment.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for shooting sports complexes. Comments on the classification should address only whether the lands are physically suited for the specified

purpose, whether the use will maximize the future use or uses of the lands and whether the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the conveyance applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decisions, or any other factor not directly related to the suitability of the land for shooting sports complexes. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: May 1, 2002.

Bill Wadsworth,

Acting Field Manager.

[FR Doc. 02-12910 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-ES-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-1430-ES; WYW-138016]

Realty Action; Sweetwater County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; classification of public lands for recreation and public purposes, (R&PP), Sweetwater County, Wyoming.

SUMMARY: The following public lands have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sweetwater County intends to use the land for construction of a county jail facility.

Sixth Principal Meridian

T. 18 N., R. 105 W.

Lot 7, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$

The land described above contains 105 acres.

FOR FURTHER INFORMATION CONTACT: Judy Mueller, Rock Springs Field Office, Bureau of Land Management, 280 Highway 191 North, Rock Springs, Wyoming 82901, (307-352-0243).

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Lease or conveyance is consistent with the Green River Resource Area Resource Management Plan dated August 8, 1997 and would be in the public interest. The

conveyance, when completed, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior. As a result of an investigation of the lands covered by this application the United States has determined, that no hazardous substances are present on the property. The land conveyed under § 2743.2 of this part shall revert to the United States unless substantially all of the lands have been used in accordance with the plan and schedule of development.

If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the plan of development, the patentee shall pay the Bureau of land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. There will be a decrease of 105 Federal acres within the rock Springs Grazing Allotment. The ten (10) animal Use Months (AUMs) associated with the 105 acre parcel will be canceled. Mr. Leonard Hay, on behalf of the Rock Springs Grazing Association, has signed a waiver allowing for cancellation of the ten (10) Federal AUMs from this allotment.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments regarding the proposed lease conveyance or classification of the lands to the Assistant Field Manager, Minerals & Lands, 280 Highway 191 North, Rock Springs, Wyoming 82901.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a county jail facility. 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 Bureau of land Management followed proper administrative procedures in reaching the decision; or any other factor not directly related to the suitability of the land for a county jail facility. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: April 19, 2002.

John S. McKee,

Field Manager.

[FR Doc. 02-12925 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NV-014) (9211)]

Notice of Availability of a Draft Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a draft amendment to the Elko and Wells Resource Management Plans and preliminary environmental assessment to address fire management.

SUMMARY: Public meetings will be held to obtain public comment on the draft amendment and preliminary environmental assessment of the Elko and Wells Resource Management Plans to address fire management. The Elko and Wells Resource Management Plans address management of public lands in Elko and portions of Eureka and Lander Counties, Nevada.

DATES: Public meetings will be announced in the local news media at least 15 days before the scheduled meetings and meeting notices will be sent to persons and parties on the mailing list. Comments not presented at these meetings are due in the Elko Field Office by June 24th.

FOR FURTHER INFORMATION CONTACT: Comments not made at the public meetings can be made by contacting Joe Freeland, Fire Management Officer, by telephone at 775-753-0200, by e-mail at Joe-Freeland@nv.blm.gov, or by mail at Bureau of Land Management, Elko Field

Office, 3900 Idaho Street, Elko, Nevada 89801. Comments can also be made by contacting Melissa Petersen, Fire Information Officer, at 775-748-4141 or by e-mail at

Melissa_Petersen@nv.blm.gov. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION: Copies of the Draft Resource Management Plan Amendment and Preliminary Environmental Assessment can be obtained by contacting Joe Freeland or Melissa Petersen at the Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. Copies of the draft plan amendment will also be available at the public meetings.

Dated: March 25, 2002.

Helen Hankins,

Elko Field Office Manager.

[FR Doc. 02-12924 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-02-1430-FM; AZA 31808]

Notice of Intent To Amend the Lower Gila South Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to amend the Lower Gila South Resource Management Plan (RMP), Arizona.

SUMMARY: Pursuant to the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM), Yuma Field Office, Arizona will prepare an environmental assessment (EA) to consider an amendment to the Lower Gila South Resource Management Plan (RMP) (June

1988). The proposed plan amendment will assess impacts of proposed changes in land tenure classification and management of Federal lands in La Paz County in southwestern Arizona. It will also assess a proposed land exchange pursuant to Section 206 of FLPMA, and the regulations found at 43 CFR part 2200. Currently, the Lower Gila South RMP does not designate the public lands in La Paz County as suitable for disposal.

DATES: Written comments will be accepted for 30 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Comments should be sent to Bureau of Land Management, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona, 85365. Comments should address issues to be considered, whether the planning criteria are adequate for the issues, reasonable alternatives to examine, and relevant information on the proposed plan amendment. Comments, including names and street addresses of respondents, will be available for public review at the Yuma Field Office, during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Contact Stephen Fusilier at 928-317-3296 or Micki Bailey 928-317-3215.

SUPPLEMENTARY INFORMATION: The proposed plan amendment is required to allow BLM to consider a land exchange proposal submitted by Allegheny Energy Supply, LLC. the proposal involves exchanging 480.80 acres of Federal land located in the Harquahala Valley near the intersection of Interstate 10 and Avenue 75E (Exit 69) in La Paz County for approximately 1,500 acres of privately owned land within or adjacent to the Gila River. Cultural Area of Critical Environmental Concern (ACEC), also known as Sears Point located near Aztec in Yuma county. The Federal lands proposed for land exchange are described as follows:

Gila and Salt River Meridian, La Paz County, Arizona

T. 2 N., R. 11 W.,

Sec. 1 lots 1 to 4, inclusive, S¹/₂N¹/₂, SE¹/₄.

The area described contains 480.80 acres. The non-Federal lands will be determined from the following described pool of lands:

Gila and Salt River Meridian, Yuma County, Arizona

T. 6 S., R. 11 W.,

Sec. 1, lots 1 to 4, inclusive, S¹/₂N¹/₂,

N¹/₂S¹/₂, SE¹/₄SW¹/₄;

Sec. 2, lots 1 to 4, inclusive, S¹/₂N¹/₂, S¹/₂;

Sec. 3, SW¹/₄, N¹/₂SE¹/₄;

Sec. 4, lots 2 to 4, inclusive, SW¹/₄NE¹/₄, S¹/₂NW¹/₄;

Sec. 5, lots 1 to 4, inclusive, S¹/₂N¹/₂,

N¹/₂SW¹/₄, SW¹/₄SW¹/₄, NW¹/₄SE¹/₄;

Sec. 6, lots 1 to 5, inclusive, S¹/₂NE¹/₄, SE¹/₄NW¹/₄;

Sec. 8, W¹/₂W¹/₂, E¹/₂SE¹/₄;

Sec. 9, W¹/₂SW¹/₄;

Sec. 10, S¹/₂NW¹/₄, SE¹/₄SE¹/₄;

Sec. 11, S¹/₂S¹/₂NE¹/₄, S¹/₂SE¹/₄NW¹/₄, S¹/₂S¹/₂;

Sec. 12, N¹/₂NE¹/₄, N¹/₂S¹/₂NE¹/₄,

SW¹/₄SW¹/₄NE¹/₄, E¹/₂NW¹/₄,

S¹/₂SW¹/₄NW¹/₄, SW¹/₄,

S¹/₂S¹/₂NE¹/₄SE¹/₄, NW¹/₄NW¹/₄SE¹/₄,

S¹/₂NW¹/₄SE¹/₄, S¹/₂SE¹/₄;

Sec. 13, NW¹/₄, S¹/₂;

Sec. 14, all;

Sec. 17, NE¹/₄, SE¹/₄SE¹/₄;

Sec. 23, N¹/₂NE¹/₄, SE¹/₄NE¹/₄SE¹/₄, E¹/₂SE¹/₄SE¹/₄;

Sec. 24, NE¹/₄, N¹/₂NW¹/₄, S¹/₂.

T. 7 S., R. 11 W.,

Sec. 1, lots 3 and 4, S¹/₂NW¹/₄, S¹/₂.

The areas described aggregate 6,091.51 acres. The proposed plan amendment to the Lower Gila South RMP will be integrated with the proposed Sears Point-North Harquahala Valley land exchange, and the impact will be analyzed in a single EA. Tentative planning issues include (1) the proposed change in land ownership; (2) management of the Gila River Cultural ACEC; and (3) social and economic impacts on the counties. This action would allow BLM to further develop its management strategy at the Gila River Cultural ACEC. The following planning criteria are proposed to guide the resolution of the issues: (1) actions must comply with laws, executive orders, and regulations; (2) the long-term benefits to the public in relation to short-term benefits must be considered; (3) alternatives must be reasonable; and (4) evaluation must use the interdisciplinary approach to land management.

Dated: April 15, 2002.

Tom Zaie,

Assistant Field Manager.

[FR Doc. 02-12923 Filed 5-22-02; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[NMNM 91985, NMNM 91986]****Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed applications to withdraw approximately 240.00 acres of National Forest System lands to protect the area and future investment of existing microwave electronic sites. This notice closes the National Forest System lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to mineral leasing and to all other uses which may be made of National Forest System lands.

DATES: Comments must be received by August 21, 2002.

ADDRESSES: Comments should be sent to the U.S. Department of Agriculture, Forest Service, Cibola National Forest, 2113 Osuna Road, NE, Suite A, Albuquerque, New Mexico 87113-1001.

FOR FURTHER INFORMATION CONTACT: Sue McHenry, Cibola National Forest, 505-346-2650.

SUPPLEMENTARY INFORMATION: On April 26 and 27, 2001, the United States Department of Agriculture, Forest Service, filed applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

1. NMNM 91985, (Gallinas Peak Electronic Site)**New Mexico Principal Meridian**

Cibola National Forest

T. 1 S., R. 11 E.,

Sec. 4, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 60.00 acres in Lincoln County.

2. NMNM 91986 (West Turkey Cone Electric Site)**New Mexico Principal Meridian**

T. 1 S., R. 11 E.,

Sec. 4, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;Sec. 5, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 80.00 acres in Lincoln County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Cibola National Forest Supervisor at the above address.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Cibola National Forest Supervisor, at the above address, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications are denied or canceled or the withdrawals are approved prior to that date. The temporary uses which will be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations including, but not limited to, construction and operation of the electronic sites.

Dated: November 16, 2001.

Edwin L. Roberson,
Field Manager.

[FR Doc. 02-12916 Filed 5-22-02; 8:45 am]

BILLING CODE 3410-11-P

UNITED STATES INTERNATIONAL TRADE COMMISSION**[Inv. No. 337-TA-457]**

Certain Polyethylene Terephthalate Yarn and Products Containing Same; Notice of Commission Determination to Reverse the Decision of the Presiding Administrative Law Judge on the Issue of Indefiniteness; Termination of the Investigation With a Finding of No Violation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the decision of the presiding administrative law judge (ALJ) contained in ALJ Order No. 61, which issued on February 4, 2002, that the patent claims at issue of were not shown to be invalid as indefinite under 35 U.S.C. 112, second paragraph, by clear and convincing evidence. The Commission has previously determined not to review an initial determination (ID), contained in Order No. 61, that found that the patent claims at issue were not infringed. 67 FR 14975 (March 26, 2002). The investigation has been terminated with a finding of no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3104. Copies of the public version of Order No. 61 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202-205-1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On May 17, 2001, the Commission instituted this patent-based investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain polyethylene terephthalate yarn and products containing same that allegedly infringed certain claims of U.S. Letters Patent 5,630,976 ("the '976 patent"). 66 FR 27586. The complainant in this investigation is Honeywell International Inc. of Morristown, New Jersey. The respondents are Hyosung Corp. of Seoul, Korea and Hyosung America, Inc., a wholly-owned U.S. subsidiary of Hyosung Corp. (collectively, Hyosung).

On December 13, 2001, respondent Hyosung moved for summary determination of patent invalidity and

non-infringement. The motion was opposed by Honeywell and supported by the Commission investigative attorney (IA). On February 4, 2002, the ALJ issued Order No. 61, a portion of which was an ID granting Hyosung's motion for summary determination of no infringement, and a portion of which was an order denying Hyosung's motion as to patent invalidity. The ALJ found that respondents had failed to prove by clear and convincing evidence that the claims at issue of the "976 patent were invalid due to indefiniteness, lack of enablement, or failure to provide an adequate written description. Respondents filed a petition for review of the ID on February 19, 2002. Complainant and the IA filed appeals of the order denying summary determination on the same date.

On March 21, 2002, the Commission determined to review only the ALJ's decision on the issue of indefiniteness under 35 U.S.C. 112, second paragraph. The issues not under review became the Commission's final determination under Commission rule 210.42(h)(2).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 190, as amended, 19 U.S.C. 1337, and in sections 210.24 and 210.45 of the Commission's Rules of Practice and Procedure, 19 CFR 210.24, 210.45.

By order of the Commission.

Issued: May 17, 2002.

Marilyn R. Abbott,
Secretary.

[FR Doc. 02-12880 Filed 5-22-02; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-02-015]

Sunshine Act Meeting

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: June 3, 2002 at 2 p.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

Status: Open to the public.

Matters To Be Considered:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-1006-1009 (Preliminary) (Urea Ammonium Nitrate from Belarus, Lithuania, Russia, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on June 3, 2002; Commissioners' opinions are currently

scheduled to be transmitted to the Secretary of Commerce on or before June 10, 2002.)

5. Outstanding action jackets:

(1) Document No. EC-02-005:

Approval of final report in Inv. No. 332-325 (The Economic Effects of Significant U.S. Import Restraints: Third Update).

(2) Document No. GC-02-057:

Concerning Inv. Nos. 731-TA-919-920 (Final) (Certain Welded Large Diameter Line Pipe from Japan and Mexico).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 20, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-13117 Filed 5-21-02; 2:13 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Partial Consent Decree ("Decree") in *United States v. Centel Corporation, et al.*, Civil Action No. 02-4090 was lodged with the United States District Court for the District of South Dakota on May 9, 2002.

The Decree resolves the United States' claims against the City of Sioux Falls, South Dakota (the City) under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 106 and 107, Section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321, and Section 1002 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2702, for past and future response costs incurred at the Fawick Park site in Sioux Falls, South Dakota. The Decree requires the City to provide the United States with access to the Site and to waive any claims it might have against the United States relating to removal activities at the Site. The Decree does not, however, require the City to pay any response costs to the United States.

The Department of Justice will accept written comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Centel Corporation, et al.*, Civil Action No. 02-4090, D.J. Ref. 90-5-1-1-07686/1.

The Consent Decree may be examined at the Office of the United States Attorney for the District of South Dakota, 230 South Phillips, Suite 600, Sioux Falls, South Dakota 57104, and at U.S. EPA Region VIII, 999 Eighteenth Street, Suite 500, Denver, Colorado 80202-2466. A copy of the Consent Decree may also be obtained by mail from the Consent Decree, Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by fax from Tonia Fleetwood, fax number (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please enclose a check in the amount of \$3.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02-12876 Filed 5-22-02; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that, on May 13, 2002, a proposed Stipulation of Settlement and Order of Dismissal (the Stipulation and Order) in *United States, Allegheny County Health Department and Group Against Smog and Pollution v. LTV Steel Company, Inc. (LTV Steel-Pittsburgh)*, Civil No. 98-570 (W.D. Pa.), and *United States v. LTV Steel Company, Inc. (LTV Steel-Cleveland)*, Civil No. 1: 98CV3012 (N.D. Ohio), was lodged with the United States District Courts in the Western District of Pennsylvania and the Northern District of Ohio.

The Stipulation and Order resolves claims for civil penalties pursuant to the Clean Air Act arising out of the past operation of LTV Steel facilities in Pittsburgh and Cleveland. Pursuant to the Stipulation and Order, the parties stipulate and agree to entry of a judgment in the LTV Steel-Pittsburgh case as specified below:

- a. \$3,450,000 in civil penalties to the United States;
- b. \$2,300,000 in civil penalties to the Allegheny County Health Department; and

c. \$100,000 in favor of the Group Against Smog and Pollution (GASP) for an environmental project developed by the Hazelwood Initiative to rejuvenate the Hazelwood, Pennsylvania community;

and in LTV Steel-Cleveland for \$1.25 in civil penalties to the United States. On December 29, 2000, LTV Steel filed for bankruptcy protection in In re: LTV Steel Company, Inc. (the LTV Bankruptcy), Bankruptcy No. 00-43866 (N.D. Ohio). The Stipulation and Order also provides that plaintiffs shall have allowed general unsecured claims against LTV Steel for the amounts specified above and that LTV Steel will use its best efforts to obtain approval by the Bankruptcy Court of its entry into the Stipulation and Order. Because of the pendency of the LTV Bankruptcy, it is unclear whether the specified amounts will be available after payments to other, secured creditors.

For thirty (30) days following this publication, the Department of Justice will receive comments relating to the proposed Stipulation and Order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044-7611, and should refer to *United States, ACHD and GASP v. LTV Steel Company, Inc.*, Civil No. 98-570 (W.D. Pa.), and *United States v. LTV Steel Company, Inc.*, Civil No. 1: 98CV3012 (N.D. Ohio), DOJ nos. 90-5-2-1-2193 and 90-7-1-919. Alternatively, because of potential mail delays associated with recent events, comments may be sent by facsimile to (202) 514-4180, with attention to the Environmental Enforcement Section.

The Stipulation and Order may be examined at the offices of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, Pittsburgh, Pennsylvania 15219, and the offices of the United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114-2600. A copy of the Stipulation and Order may be obtained by mail from the United States Department of Justice Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044-7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please reference the Stipulation of Settlement and Order of Dismissal in *United States, ACHD and GASP v. LTV Steel Company, Inc.*, Civil No. 98-570 (W.D. Pa.), and *United States v. LTV*

Steel Company, Inc., Civil No. 1: 98CV3012 (N.D. Ohio), DOJ nos. 90-5-2-1-2193 and 90-7-1-919, and enclose a check made payable to the United States Treasury in the amount of \$3.75 (25 cents per page reproduction cost).

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02-12877 Filed 5-22-02; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed partial consent decree in *United States and State of California v. Oil & Solvent Process Company, Chemical Waste Management, Inc., Fairchild Holding Corporation, and R. H. Peterson Company*, Consolidated Cases: CV 98-0760, CV 97-8230, CV 96-6634 TJH was lodged on April 22, 2002, with the United States District Court for Central District of California. The proposed Consent Decree would resolve certain claims against Oil & Solvent Process Company, Chemical Waste Management, Inc., and R. H. Peterson Company under Sections 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 & 9607, as amended brought against all of the above captioned defendants to recover response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the San Gabriel Valley Superfund Sites, Suburban Operable Unit ("Site") in Los Angeles, California. The United States alleges that Settling Defendants are liable as persons who currently own or owned a portion of the Site at the time of disposal of a hazardous substance. Under the proposed partial Consent Decree, the Settling Defendants will pay \$950,000, of which \$47,500 will be paid to the State of California and \$902,500 will be paid to the Hazardous Substances Superfund to reimburse the United States for response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and

Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20530, and should refer to *United States and State of California v. Oil & Solvent Process Company, Chemical Waste Management, Inc., Fairchild Holding Corporation, and R. H. Peterson Company*, Consolidated Cases: CV 98-0760, CV 97-8230, CV 96-6634 TJH, DOJ Ref. # 90-11-3-1691.

The Consent Decree may be examined at the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105 and the United States Attorney's Office for the Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012 c/o Assistant United States Attorney Suzette Clover. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of \$12.00 (25 cents per page reproduction costs), payable to the United States Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02-12875 Filed 5-22-02; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day notice of information collection under review: Reinstatement, without change, of a previously approved collection for which approval has expired; Crime Victim Compensation State Certification Form.

The Department of Justice, Office of Justice Programs, Office of Victims of Crime, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 22, 2002.

If you have written comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact

Jeff Kerr, Program Specialist, 202-616-3581, Department of Justice, Office of Justice Programs, Office for Victims of Crime, 810 7th Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate 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) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Crime Victim Compensation State Certification Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is OJP Administrative Form 7390/5, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local and Tribal Governments. The Victim of Crime Act (VOCA) as amended and the Victim Compensation Program Guidelines require each crime victim compensation program to submit an annual Crime Victim Compensation Certification Form. Information received for each program will be used to calculate the annual formula/block grant amount for the VOCA state crime victim compensation programs. The information is aggregated and serves as supporting documentation for the Director's biennial report to the Congress.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 54

respondents will each complete a one hour annual report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 54 total hour burden associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530;

Dated: May 17, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-12900 Filed 5-22-02; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request; Correction

May 15, 2002.

On Monday, May 5, 2002, the Department of Labor (DOL) published a notice in the **Federal Register** (67 FR 30400, May 6, 2002) announcing an opportunity to comment on an information collection request (ICR) that was submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). The notice announced an opportunity to comment on the ICR for ESA's OFCCP Recordkeeping and Reporting Requirements—Supply and Service (OMB control number 1215-0072).

The corrections are as follows:

On page 30400 in the table, the average hours per response for Standard Form 100, should read "3.7" instead of "3.8".

On page 30400, column one, the Total Burden Hours should read "9,967,675" instead of "9,967.675"

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02-12956 Filed 5-22-02; 8:45 am]

BILLING CODE 4510-CM-M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor Through Education in Bolivia and Peru

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for Cooperative Agreement Applications (SGA 02-04).

SUMMARY: The U. S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award up to US \$3 million through a cooperative agreement(s) to an organization or organizations to develop and implement educational and vocational programs as a means to combat the worst forms of child labor as defined in International Labor Organization (ILO) Convention No. 182. The programs, to take place in the Department of Potosí in Bolivia and the Department of Puno in Perú, should complement as appropriate USDOL-funded child labor programs being implemented by the ILO's International Program on the Elimination of Child Labor (IPEC) in artisan mining communities. ILAB is seeking applications from qualified organizations for implementation of an educational initiative to improve access to basic quality education for children working or at risk of working. The programs should include components of awareness raising, teacher training, development and distribution of locally relevant educational materials, vocational training, institutional strengthening, and mobilization of resources for education. Applicants may submit applications for implementation in one or both countries.

DATES: The closing date for receipt of applications is July 9, 2002. Applications must be received by 4:45 p.m. (Eastern Time) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** that may be obtained from your nearest U.S. Government office or public library or online at <http://www.nara.gov/fedreg/nfpubs.html>.

Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N-5416, Attention: Lisa Harvey, Reference: SGA 02-04, Washington, DC 20210.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: All applicants are advised that U.S. mail delivery in

the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free number), prior to the closing deadline. All inquiries should reference SGA 02-04. See Section III.C for additional information.

SUPPLEMENTARY INFORMATION: The Bureau of International Labor Affairs, USDOL, announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations for the purpose of preventing and combating the worst forms of child labor through primary, secondary, and/or vocational education in Bolivia and Perú. The cooperative agreement(s) will be managed by ILAB's International Child Labor Program (ICLP) through its Child Labor Education Initiative (EI), to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in improving education for children working or at risk of working in the target areas.

I. Background and Program Scope

A. USDOL Global Support to Eliminate Child Labor and Expand Access to Education

Since 1995 as mandated by the U.S. Congress, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC). Recently, funding has gone to assist countries in the implementation of ILO Convention 182 on the Worst Forms of Child Labor. USDOL/ILAB contributions to date to ILO/IPEC have amounted to some US \$112 million, making the United States the program's largest donor and a leader in global efforts to combat child labor. In USDOL's FY 2001 and FY 2002 appropriations, in addition to US \$90 million in funds earmarked for ILO/IPEC, ILAB received US \$74 million for EI that will fund programs to increase access to quality, basic education in areas with a high incidence of child labor. The cooperative agreement(s) awarded under this solicitation will be funded by this new initiative.

ILAB's EI nurtures the development, health, safety and enhanced future

employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Child labor elimination will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and could resort to other forms of hazardous work.

The Child Labor Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

B. USDOL/ILAB Efforts to Combat Child Labor in Bolivia and Peru

In 2000, USDOL/ILAB, through ILO/IPEC, funded the *Program to Prevent and Progressively Eliminate Child Labor in Small-scale Traditional Gold Mining in South America* (hereafter referred to as "ILAB/IPEC South America Small-scale Mining Project"—see Appendix E) that includes Perú and Bolivia as implementing countries. The project targets mining, a worst form of child labor as defined by ILO Convention No.182, because it harms the health and safety of children under 18. In determining the types of work likely to harm the health and safety of children, ILO Convention No. 182 considers work that exposes a child to physical abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; and work for long hours or night work where the child is unreasonably confined to the premises.

A second phase of the ILAB/IPEC South America Small-scale Mining project is planned, but not yet confirmed. At this time, the applicant is not required to account for this project in the application, however, USDOL/ILAB reserves the right to modify any

project which may duplicate the second phase of this ILAB/IPEC project.

The education activities that would be undertaken by the applicant awarded the cooperative agreement (hereafter referred to as "Grantee") need to address the major obstacles and gaps that currently serve as barriers to the education of children living in the areas of the ILAB/IPEC South America Small-scale Mining Project. In addressing the obstacles and barriers to quality basic education, the Grantee will work within the parameters of the broader implementing environment including the national educational reforms operating in each country (described in more detail in Appendices C and D). In preparing responses to this solicitation, applicants should show a thorough understanding of the realities and constraints operating in the mining communities that are being targeted.

In Bolivia, the education program funded under this cooperative agreement should build on activities begun by the USDOL-funded ILAB/IPEC project in the Department of Potosí, in the communities of Llallagua and Potosí. This area has been chosen because it has the largest known concentration of children working in mine-related activities. The 1992 National Census projected that in 1998 there would be approximately 124,000 inhabitants in the city of Potosí, more than 35,000 (29 percent) of which belong to the local mining community (*Study on Cerro Rico*, Potosí, 2001). Of these 35,000, more than 6,000 are children involved in mine-related labor, but exact data on their school attendance or educational needs are not fully known. The same study shows that Potosí has a 51 percent level of poverty, which is above the national average. In the mining areas, the poverty level is significantly higher.

In Perú, the focus should be in the Department of Puno, Province of San Antonio de Putina, in the district of Ananea and the surrounding mining communities of Ananea/La Rinconada/Cerro Lunar, and selected areas in the districts of Putina and/or Sandia. The project should build on activities begun by the USDOL-funded ILAB/IPEC project in La Rinconada. Some of the communities are located at an altitude of 5,400 meters (17,550 feet), and the Grantee will be confronted with limited services and a challenging work environment. This area has been chosen because it has one of the largest populations of child miners in the country. It is estimated that there are 26,264 children working in gold mining in the Ananea area of Puno where several mining communities are located

(Piazza, *Children Working in Small-scale Traditional Gold Mining in Perú*, 2001). It is also estimated that of approximately 5,000 children living in La Rinconada, only about 1,000 attend school.

C. Barriers to Quality Education for Child Laborers

Experts agree that improvements in the quality of education are an essential component in the variety of interventions that can be successful in eliminating child labor. Whereas the USDOL-funded ILAB/IPEC project aims to address many of the *causes of child labor*, the activities funded under this solicitation should complement and supplement them by addressing the numerous *barriers to education* confronted by the children. Although ongoing efforts exist in Bolivia and Perú to withdraw current and prevent future generations of children and adolescents from leaving school and entering the work force (see Appendices C and D), many of these efforts are isolated, or fail to directly address the needs of the children targeted by this project. Most of these barriers are common to both countries, and they have been categorized relative to the broad goals of the Child Labor Education Initiative.

1. Insufficient awareness on the importance of education for all children and inadequate mobilization of a wide array of actors to improve and expand education infrastructures

There are a number of barriers and challenges in efforts to raise awareness which include:

- Parents/families in the Andean highlands, often as a byproduct of cultural beliefs and societal norms, view work as a better option than school. This view can become more ingrained when the quality of education is poor, classes are irrelevant and few alternative recreational opportunities exist for children.
- Teachers, health providers and authorities often do not understand the social, educational, nutritional, emotional, and/or health needs of child laborers. If these needs were satisfied, children would have more of a chance to attend school.
- Child labor laws are not known and therefore not enforced. In addition, some children believe in the need and the right to work as minors, and have organized to demand better working conditions.

2. Low quality formal and transitional education systems that discourage working children and those at risk of working from attending school

The low quality of education found in project target areas is a result of many factors. These include:

- Poorly trained, poorly paid and poorly motivated teachers with little understanding of the realities of working children.
- Curricula that are irrelevant to children living in these regions.
- Lack of learning and teaching materials.
- Limited budget earmarks for education.
- Poor educational infrastructure in remote rural areas such as those of this project.
- Lack of understanding by teachers of the goals and strategies of education reform, and/or lack of willingness of teachers to accept it.
- Few opportunities for vocational education and training, particularly for adolescents and families of adolescents working in the worst forms of child labor. In addition, existing vocational training programs are not always based on an analysis of future employment opportunities.

3. Inadequate National Institutions and Policies on Education and Child Labor

There are a number of gaps that contribute to the weaknesses of institutions. These in turn affect the quality of implementation of policies and/or programs on education and child labor. Institutional and policy constraints include:

- Lack of national, departmental and local level data/information on the extent/nature of child/adolescent labor. The collection of reliable data is hampered by differing definitions of what constitutes work, limited candor in discussing a sensitive topic, and limited funds and/or political will for in-depth studies.
- Lack of baseline information on education achievement and needs of child/adolescent labor population in target areas. For example, the link between child labor, formal school dropout, and access to and attendance in non-formal school is still not well understood. Studies to date on working and night school students present contradictory evidence. A study conducted by UNICEF in 2001, *La Escuela Nocturna: Educación Nocturna para Niños y Adolescentes en El Alto* (Night School: Night Education for Children and Adolescents in El Alto), found, contrary to expectation that only about 56% of students were working,

while Gottret, *et al.*, in *La Escuela: Educación para niños y adolescentes trabajadores en Bolivia* (A study on education for children and adolescent workers in Bolivia), reported that 80% of night school students were working.

- Lack of methods to gauge the educational achievement of working children.
- Lack of information on community demographics, which limits local officials in their ability to program and distribute scarce budget resources for many social services including education. Additions to existing infrastructure or teacher appointments are often denied by regional authorities that maintain that the need is non-existent or smaller than that estimated by local residents.
- Missing linkages between health and education services. Children who go to school hungry have trouble concentrating on their lessons, and children who work in mine-related labor face specific threats and side-effects to their health that are not being addressed (including exposure to mercury, dust, and damp and cold working spaces) and the possible effect of these exposures to their cognitive development and educational performance.
- Community institutions have inherent weaknesses that hamper their effectiveness or potential impact. For example, school committees have proven to be good at making improvements to education infrastructure but have not developed any expertise in the area of oversight and monitoring of quality education.
- Inexperienced municipal organizations are becoming increasingly responsible for making education-related decisions as education decentralization strategies take hold. With little prior experience or training, decisions are often not cost-effective or do not follow good educational principles.

4. Challenges to Achieving Long-Term Sustainability of Efforts

Sustainability is ultimately linked to project impact and the ability of individuals, communities and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including

financial commitment and policy change) to continue the actions generated by the project as long as they are still needed, including enforcement of existing policies that target child labor and school attendance. In both Bolivia and Peru, there are a number of factors that affect the ability of a project to achieve sustainable impact at these multiple levels:

- Poverty of families and lack of other income alternatives to child labor.
- Insufficient organizational commitment due to lack of skills, resources or ability to raise resources.
- Lack of enforcement of child labor and education laws, and related policy reforms.
- Low levels of exchange and use of "lessons learned" from current and previously implemented projects.

II. Authority

ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2001, Public Law 106-554, 114 Stat. 2763A-10 (2000).

III. Application Process

A. Eligible Applicants

Any commercial, international or non-profit organization capable of successfully developing and implementing education programs for child laborers or children at risk is eligible to apply for this cooperative agreement(s). Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in Bolivia and Peru, including local NGOs and faith-based organizations (see Appendices C and D). The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a 501(c)(4) Entity. See 26 U.S.C. 501(c)(4). According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities, will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application in English per country plus two (2) copies of the application(s), must be submitted to the U.S. Department of Labor, Procurement

Services Center, 200 Constitution Avenue, NW, Room N-5416, Washington, DC 20210, not later than 4:45 p.m. ET, July 9, 2002.

Accompanying documents must also be in English. To aid with review of applications, USDOL also encourages applicants to submit two (2) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

An application for each country must consist of two (2) separate parts. Part I of an application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number [CFDA] is 17.700) and sections A-F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical application that demonstrates capabilities in accordance with the Statement of Work and the selection criteria.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 25 single-sided (8½ inches x 11 inches), double-spaced, 10 to 12 pitch typed pages per country, for which a response is submitted. *ANY APPLICATIONS THAT DO NOT CONFORM TO THESE STANDARDS MAY BE DEEMED NON-RESPONSIVE TO THIS SOLICITATION AND MAY NOT BE EVALUATED.* Standard forms and attachments are *not* included in the page limit. Each application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits. Additional supporting materials should also be in English.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EST, July 9, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before July 9, 2002;
2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or
3. It 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 (2) working days, excluding weekends and Federal holidays, prior to July 9, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free number), prior to the closing deadline. All inquiries should reference SGA 02-04.

D. Funding Levels

Up to US \$3 million is available for implementation in the two countries, approximately US \$1.5 million for Perú, and US \$1.5 million for Bolivia. USDOL/ILAB will award up to two cooperative agreements, one for each country, but if one organization submits the best applications for both countries, then only one cooperative agreement will be awarded. An organization may apply for one or both projects. Partnerships of more than one organization may also apply to implement one or both programs.

E. Length of Cooperative Agreement Period

The duration of the program(s) funded by this SGA is four (4) years. The start date of program activities will be negotiated upon awarding of grant.

IV. Requirements

The applicant will propose innovative and cost-effective approaches that will meet the education needs of children living in the communities targeted by the project in each country. In proposing approaches, applicants should support the goals of USDOL/ILAB's EI: (1) Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures; (2) Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school; (3) Strengthen national institutions and policies on education and child labor; and (4) Ensure the long-term sustainability of these efforts.

Project key personnel should work closely with the ILO/IPEC's project manager of the USDOL-funded ILAB/IPEC project. The requirements listed below are the basis from which the Grantee(s) will develop a project document after award. In developing responses, applicants should take into account information available in Appendices C and D, and project documents and supporting documentation available on-line (and listed in Appendix E). Below is a listing of country-specific requirements to guide applicants in the development of responses to this solicitation.

A. Statement of Work

For each country which the applicant is submitting an application, the application should suggest approaches to address the barriers to quality education for child laborers identified in Section I.C above, while taking into account the implementing environment and resources available from programs

or activities already existing in the country. Activities in general should not duplicate existing efforts in target communities but rather, should complement them. Also, the education activities proposed in this solicitation should coordinate closely with and complement, but not duplicate, activities of the ILAB/IPEC South America Small-scale Mining Project in Bolivia and Perú.

Bolivia

The EI project should build on initial work done by ILO/IPEC in Potosí and Llalagua. The applicant should propose creative and innovative approaches to improve access, quality, and relevance of education for working children, especially child/adolescent miners and children at risk of working in mining-related activities in the Department of Potosí.

The proposed project should aim to improve education access and quality. Project interventions should try to increase enrollment and attendance in target schools, reduce dropout rates, and increase promotion to the next grade. The project could include a number of interventions such as awareness raising, school management/teacher training, school committee strengthening, and educational materials to target schools in rural areas (see Appendix C for implementing environment in Bolivia).

Because of the limited resources available to this project, the applicant might consider improving the quality of night schools in the Department of Potosí, where most working children/adolescents who study receive their education. At the same time, the applicant is encouraged to suggest other ways to improve educational quality for this target population.

In developing proposed project interventions, where relevant, applicants may consider suggesting innovative approaches to work with local communities, faith-based organizations, and governmental organizations at the local and national level.

Perú

The applicant should propose creative and innovative approaches to improve access, quality, and relevance of primary and secondary education for working children, especially child/adolescent miners and children at risk of working in mining in the Department of Puno in the area surrounding the mining communities of Ananea/La Rinconada/Cerro Lunar and including selected schools in the districts of Putina and/or Sandia. Project interventions should increase

enrollment and attendance in target schools, reduce dropout, and increase promotion.

The applicant should suggest a strategy and logistics for improving the quality of education in the target mining communities and other nearby rural communities in the Department of Puno. The application should elaborate on how schools will be selected, how collaboration with local educational authorities will be undertaken, and the number of teachers to be included in the intervention. Target schools should be strategically selected to balance the project's goal of making sustainable improvements in the quality of education for working children. By the end of the project, improvements in the achievement levels of students in target schools should be evident in scores on standardized (preferably Ministry of Education) achievement tests.

In developing interventions, where relevant, applicants may consider suggesting innovative approaches to work with local communities, faith-based organizations, and governmental organizations at the local and national level.

B. Deliverables

Unless otherwise indicated, the Grantee(s) must submit copies of all required reports to ILAB by the specified due dates.

1. *Project Designs.* A project document in a format to be established by ILAB in the logical framework format will be used, and will include a background/justification section, project strategy (objectives, outputs, activities, indicators, means of verification), project implementation timetable and project budget. The project design will be drawn from the application written in response to this solicitation. The document will also include sections that address coordination strategies, project management and sustainability. The time for delivery of this document will be negotiated at the time of the award.

2. *Technical and Financial Progress Reports.* The Grantee(s) must furnish a typed technical report to ICLP on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. The Grantee must also furnish a separate financial report (SF 272) to ICLP on the quarterly basis mentioned above. The format for the technical progress report will be the format developed by ICLP and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

- b. An accounting of staff and any subcontractor hours expended;
- c. An accounting of travel performed under the cooperative agreement during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived;
- d. A description of current problems that may impede performance, and proposed corrective action;
- e. Future actions planned in support of each project objective;
- f. Aggregate amount of costs incurred during the reporting period, and
- g. Progress on indicators (to be reported annually).

3. *Annual Work Plan.* An annual work plan will be developed within 2 months of project award and approved by ILAB so as to ensure coordination with other relevant government and social actors in the two countries. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. *Monitoring and Evaluation Plan.* A monitoring and evaluation plan will be developed, in collaboration with ILAB, including beginning and ending dates for the project, planned and actual dates for mid-term review, and final end of project evaluations. The monitoring plan will be prepared after completion of baseline surveys, including revision of indicators provided in project document, targets, and means of verification. Progress on indicators will be reported semi-annually.

5. *Evaluation Reports.* The Grantee(s) and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The Grantee(s) must respond to any comments and recommendations resulting from the review of the mid-term report.

C. Production of Deliverables

1. *Materials Prepared Under the Cooperative Agreement.* The Grantee(s) must submit to ILAB all media-related and educational materials developed by it or its sub-contractors before they are reproduced, published, or used. ILAB considers that education materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement. All materials produced by Grantee(s) must be provided to ILAB in a digital format for possible publication by ILAB.

2. *Acknowledgment of USDOL Funding.* In all circumstances the following must be displayed on printed materials:

"Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E-9-X-X-XXXX."

When issuing statements, press releases, requests for applications, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

- a. The percentage of the total costs of the program or project, which will be financed with Federal money;
- b. The dollar amount of Federal funds for the project or program; and
- c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL's role will be identified as one of the following:

- a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the Grantee(s) written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.
- b. If ILAB determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

"This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

D. Administrative Requirements

1. *General.* Grantee organizations are subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. The cooperative agreement(s) awarded under this SGA are subject to the

following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. *Sub-contracts.* Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928 and 13021 as amended, the Grantee(s) is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. *Key Personnel.* The applicant shall list individual(s) who has (have) been designated as having primary responsibility for the conduct and completion of all work in project(s) it proposes (see Section V.B.3). The applicant will submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee(s) agrees to inform the (GOTR) whenever it appears impossible for these individual(s) to continue work on the project as planned. The Grantee(s) may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the Grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated

(paid out) after the end of the cooperative agreement period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee(s) purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period shall be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. *Site Visits.* USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the Grantee(s) shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applications for Grant Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. Applicants are advised that the panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee(s) on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of applications, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make final selection determination based on what is most advantageous to the Government, considering factors such as: Panel findings and the availability of funds. The Grant Officer's

determination for award under this SGA 02-04 is final.

Note: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, ILAB will enter into negotiations about such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Rating Criteria and Selection

The technical panel will review applications against the various criteria on the basis of 100 points with an additional five points available for non-federal or leveraged resources.

The factors are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Budget Plan (40 points)

a. *Overview.* This section of the application must explain:

(1) The applicant's proposed innovative methods for performing all the specific areas of work requirements presented in this solicitation.

(2) The expected outcomes over the period of performance for each of the tasks; and

(3) The approach for producing the expected outcomes.

The applicant should describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant should explain the rationale for using this approach. In addition, this section of the application should demonstrate the applicant's thorough knowledge and understanding of the issues involved in providing education to working children; best-practice solutions to address their needs; and the implementing environment in Bolivia and/or Peru.

b. *Implementation Plan.* The applicant should submit an implementation plan, preferably with a visual such as a Gantt chart, for the project. The implementation plan must list the outcomes, objectives and activities during the life of the project, and scheduling of time and staff starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant should address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement

the project. The applicant also should include a project organizational chart, demonstrating management structure, key personnel positions, and indicating proposed links with Government, civil society leaders, educators, and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective of reducing child labor through education.

(3) Explain how appropriate awareness raising, training, and pedagogic materials will be developed.

(4) Demonstrate how the applicant will strengthen national institutions and policies on education and combating child labor.

(5) Demonstrate how the applicant would systematically report on project performance to measure the achievement of the project objective(s).

(6) Demonstrate how the applicant would build national and local capacity to ensure that project efforts to reduce child labor and the effects of child labor through the provision of education are sustained after completion of the project.

c. *Budget Plan.* Develop a country-specific budget of up to US \$1.5 million for the Bolivia project and US \$1.5 million for the Peru project. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, equipment, travel, and other related costs. Preference may be given to applicants with lower administrative costs.

d. *Management and Staff Loading Plan.* This section also must include a management and staff-loading plan. The management plan is to include the following:

(1) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and sub-contractors or consultants who will be retained;

(2) A description of the functional relationship between elements of the project's organization;

(3) The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project; and

(4) A description of how the implementation plan will be integrated into and support the projects being financed by USDOL through ILAB/IPEC.

The staff-loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including subcontractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal

laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

2. Experience and Qualifications of the Organization (35 points)

The evaluation criteria in this category are as follows:

a. The applicant has international experience in the Latin American region implementing basic and vocational education programs that address issues of access and quality for disadvantaged children including working children. The applicant should provide ILAB with a listing of all its offices in the region and country or how the applicant plans to establish the necessary field presence for the projects.

b. The applicant must show ability to support a field office through infrastructure, communication systems, technical assistance, and other systems that enhance capacity to perform in a difficult field environment. The applicant should also establish an office that gives it the capability to work directly with government ministries, educators, civil society leaders, and other local organizations, *e.g.*, community-based or faith-based groups; the applicant can document that it has already established relations of this nature in the target country or can show that it has the capacity to readily establish such relations.

The application should include information about previous grants or contracts relevant to this solicitation including:

a. The organization for which the work was done;

b. A contact person in that organization with their current phone number;

c. The dollar value of the grant, contract, or cooperative agreement for the project;

d. The time frame and professional effort involved in the project;

e. A brief summary of the work performed; and

f. A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in appendices and will not count in the 25-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points)

This section of the application must include sufficient information to judge the quality and competence of staff proposed to be assigned to the project to

assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals who will be working on this project. Accordingly, in its evaluation of the applicant's application, USDOL will place emphasis on the applicant's commitment of personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

a. The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or subcontracting. Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control must be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

a. The applicant must designate a regionally located Project Director for each country (Key Personnel) to oversee the project and be responsible for implementation of the requirements of the cooperative agreement in each country. The Project Director must have an FRS 4 written and spoken level of Spanish and English as translation/interpretation services are scarce in targeted communities. The Project Director must also have a minimum of three years of professional experience in a leadership role in implementation of complex education or training programs

in developing countries in areas such as education policy; improving educational quality and access; teacher training and materials development; educational assessment of disadvantaged students; development of community participation in the improvement of basic education; and monitoring and evaluation of education or training (or similar) projects. Preferred candidates will also have knowledge of child labor eradication.

b. The applicant must also designate an Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. Given the scarce availability of translation/interpretation services in the targeted communities, this person must have at least an advanced working knowledge of Spanish and English. The Education Specialist must also have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with child labor, psychosocial counseling, and education monitoring and evaluation is an asset.

c. The applicant must specify other personnel proposed to carry out the requirements of this solicitation.

d. The applicant must include a description of the roles and responsibilities of all personnel proposed for this project and a resume for each professional person to be assigned to the program. Resumes will be attached in an appendix. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, and employing organizations and educational background. Duties must be clearly defined in terms of role performed, *e.g.*, manager, team leader, consultant, etc. It should be whether the individual is currently employed by the applicant, and (if so) for how long.

e. The applicant must indicate whether proposed personnel are currently employed by the organization or are dependent upon planned recruitment or sub-contracting. Note that management and professional technical staff members comprising the applicant's proposed team should be

individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control must be clearly delineated to ensure responsiveness to the needs of USDOL.

4. Leverage of Funding (5 points)

The Department will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. Of special interest is an applicant(s)'s ability to provide school

health and food assistance, and income-generation and/or credit or vocational education programs in support of adults in the families of target children, or for older children who complete education programs and are ready for self-employment. These programs will not be financed by the project, but can supplement and enhance project objectives. The applicant may include any leveraging or co-funding anticipated. To be eligible for the additional points in the criterion, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this

cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc.

Signed at Washington, DC, this 17th day of May, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendix A: SF 424—Application Form

Appendix B: SF 424A—Budget Information Form

Appendix C: Implementing Environment in Bolivia

Appendix D: Implementing Environment in Perú

Appendix E: Background Material Available on the Web

Appendix A: SF 424 - Application Form.

APPLICATION FOR

APPENDIX "A"

OMB Approval No. 0348-0043

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		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, telephone number and fax 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 H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipality J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District 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: 00-0000 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:		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	
a. Federal	\$.00		
b. Applicant	\$.00		
c. State	\$.00		
d. Local	\$.00		
e. Other	\$.00		
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
g. TOTAL	\$.00		

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

Previous Editions Not Usable
Standard Form 424 (REV 4-88)

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Authorized for Local Reproduction

Appendix B: SF 424A—Budget Information Form

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. <i>Personnel</i>			
2. <i>Fringe Benefits (Rate)</i>			
3. <i>Travel</i>			
4. <i>Equipment</i>			
5. <i>Supplies</i>			
6. <i>Contractual</i>			
7. <i>Other</i>			
8. <i>Total, Direct Cost (Lines 1 through 7)</i>			
9. <i>Indirect Cost (Rate %)</i>			
10. <i>Training Cost/Stipends</i>			
11. <i>TOTAL Funds Requested (Lines 8 through 10)</i>			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. <i>Cash Contribution</i>			
2. <i>In-Kind Contribution</i>			
3. <i>TOTAL Cost Sharing / Match (Rate %)</i>			

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 which you are required to provide with W2 forms.

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. Also include a detailed description of equipment to be purchased including price information.

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: Implementing Environment in Bolivia

I. Legal Framework

Child Labor Laws

In Bolivia, children less than 14 years of age may not legally work except as apprentices. Children less than 18 years of age are prohibited from work that could retard their physical growth, that requires great strength, or that is dangerous (*Ley General del Trabajo, del 8 de diciembre de 1942, Decreto Supremo del 4 de agosto de 1940*).

Education Laws and Structure

As part of the education reform of 1994, compulsory education was defined as eight years and was divided into three cycles: three years of basic learning, three years of essential skills, and two years of applied learning. These cycles are for children of approximately six to 14 years of age. Pre-school education is not yet obligatory because the government is not in a position to offer it nationally. Among other things, the Law of Education Reform calls for the introduction of an intercultural focus at all levels of education and the application of a bilingual component. The reform has survived through three different administrations and is the first experience of continuity of any social policy in Bolivia. (For a more extensive review of the education reform, please see link to *UNESCO: Education For All Country Reports* in Appendix E).

The education system is decentralized and overseen by the following institutions:

- The *Prefectura* (Prefecture), as the representative of the central government, is responsible for hiring personnel at the district level.

- The *Servicio Departamental de Educación (SEDUCA)* is under the control of the *Prefectura* and is responsible for the administration of public education and the supervision of private education at the departmental level. The Director of *SEDUCA* is responsible for formulating the Departmental education plan, for supervising and evaluating district education directors, and for the completion of annual goals and objectives.

- The *Direcciones Distritales de los Municipios* (Municipal District Offices) are responsible for buildings and equipment.

- The *alcaldes* (mayors), supported by the *consejos municipales* (municipal councils), administer education at the local level.

- The *Direcciones de Núcleos Escolares* (Offices of School Networks) administer groups or networks of schools, organized according to geographic, cultural, and linguistic criteria, that include at least one school with all educational levels and are supported by one *asesor pedagógico*.

- The *Direcciones de Unidades Escolares* (Individual School Offices) administer individual schools.

For more information on the Bolivian education system, see Ministry of Education link in Appendix E.

II. Extent and Nature of Child Labor

Statistics

- In the most recent national census (1992), it was estimated that 32 percent of Bolivian children/adolescents between seven and 19 years of age were in the workforce. Twenty-nine percent of this group is located in cities and 71 percent in rural areas (*Plan Nacional de Acción por la Niñez y Adolescencia en situación de Riesgo en Bolivia 2001–2005*).

- More recently, the World Bank (*World Development Indicators* 2000 CD Rom, the World Bank, Washington DC, 2000) reported that 12.6 percent of Bolivian children ages 10–14 are working (although it is likely that the above figures underestimate the number of child laborers since most child labor takes place in the informal sector).

- For child/adolescent workers who work during the day, night schools have become one of the only educational alternatives. In 1997 there were 523 night schools in Bolivia, the majority of them (62.72 percent) concentrated in the country's three largest cities of La Paz, Cochabamba, and Santa Cruz.

Type of Work in Which Children Are Engaged

The worst forms of child labor in Bolivia have been identified as mining, commercial sexual exploitation, sugar cane harvest, Brazil nut harvest, and domestic work (in houses other than one's own) by children less than 14 years old.

III. Efforts

Government

Rural education has been designated a priority area in the education reform, and the *Ministerio de Educación, Cultura y Deportes's* (Ministry of Education, Culture and Sports') Plan Huascarán has promised to put computers and parabolic disks for Internet connection in 5,000 rural communities to help improve rural education in the most isolated areas.

The *Viceministro de Educación Alternativa* (Viceministry for Alternative Education), established by the reform (Law 1565), develops programs to benefit children and adolescents whose needs are not met by the formal education system. *Educación Juvenil Alternativa (EJA)* is in the process of developing a curriculum for *educación nocturna* (night school) that will respond to the needs and interests of the night school

population, estimated to be 80 percent working and street children (Gottret, *et al.*, *La Escuela: Educación para niños y adolescentes trabajadores en Bolivia*).

The Ministry of Labor (MOL) has expressed interest in working with other ministries to implement existing laws in the Labor Code in 2002 regarding adolescents between the ages of 14 and 17, including working with Bolivia's main technical training program (INFOCAL) and also including working children/adolescents in its departmental scope.

The *Comisión Interinstitucional para la Erradicación del Trabajo Infantil* (Interinstitutional Comisión for the Eradication of Child Labor), headed by the MOL, is composed of representatives from government institutions, civil society, and international organizations and is the author of a 10-year (2000–2010) plan for the progressive eradication of child labor. There is also a mining sub-committee made up of 15 institutions, eight of which participate regularly.

Preliminary national studies have been completed in three of the sectors considered to be worst forms: Mining, sugar cane, and Brazil nuts. Studies of two other worst forms, child sexual exploitation and domestic workers, are underway.

International Donors

The education reform is financed by World Bank and Inter-American Development Bank credit, and by donations and technical assistance from European donors. ILO/IPEC is implementing the USDOL Eradication of Child Labor in Artisan Gold Mining Project described in the context of the solicitation. UNICEF has conducted various child labor studies and has implemented awareness raising workshops in all departments. UNICEF also works in both basic and alternative education and has trained teachers in basic bilingual education.

International NGOs

CARE has worked in recent years on girls' education, developing a curriculum to make education more targeted to girls. They have also sponsored a Saturday program covering topics such as human rights, children's rights, and alternative math courses for working girls. They are working in eight evening schools in La Paz and El Alto.

Fe y Alegría (Faith and Happiness) is working nation-wide in Bolivia, including in 14 schools in the Department of Potosí. *Fe y Alegría* teachers are employed by the Ministry of Education, but *Fe y Alegría* provides the administration of the schools and teacher training.

Save the Children has a basic education program called Primary Education Now! in Oruro. The program works to improve the quality of education in peri-urban schools by training teachers and renovating and constructing classrooms, bathrooms or kitchens and providing computers, audio-visual equipment, children's literature and didactic material. The program also provides health and nutrition services to children and strengthens parent associations and school boards.

Non-Governmental Organizations

Centro Boliviano de Investigación y Acción Educativas (CEBIAE—Bolivian Center for Research and Education Action) has been addressing education issues for over 26 years, and for the past three years has been working on education quality at the school level, and incorporating greater social participation in public education.

CEBIAE is currently working with local education officials to train teachers in reform methods in Potosí within the framework of the institutional plan "Education for Local Development in Municipal Districts, 2001–2004." See Appendix E for more information on CEBIAE.

Confederación de Trabajadores de Educación Urbana (Confederation of Urban Education Workers). According to a union representative, Bolivian teachers make about 600 Bolivianos (a little less than \$100) per month. Teachers prefer to work for private schools because the remuneration is better than in the public system. According to the Confederation, the Ministry of Education is not willing to negotiate with teachers, so there will likely be strikes within the lifetime of the project. Night school teachers are members of the Association of Adult Education, a network of the Confederation.

Cruz Roja (The Red Cross) in Potosí is providing a vocational training program for 60 adolescents. The program is structured in three modules of three months each, one theoretical, one practical, and one a combination of theory and practice. Thirty of the 60 participants have been placed in jobs.

El Centro de Investigación y Apoyo Campesino (CIAC—The Center for Research and Rural Aid), located in the southern Andean region (Potosí and Tarija) of Bolivia, was founded to design and execute programs in support of rural communities. In the field of education, CIAC provides teacher training and training for juntas escolares in rural schools. CIAC and three other NGOs (Caritas, ACLO, and Causanachispaj) are running rural boarding schools for children whose community schools include only the first three grades.

Programa Alternativo de Prevención Integral de la Marginalidad en la Población Urbana Infanto-Juvenil de y en la Calle (ENDA—Alternative Social Program to Prevent Marginality in Urban Youth and Street Children). ENDA's goals are: Reducing risk to working and street children, improving their socialization, and supporting their re-integration into the family and community. To accomplish these goals the organization provides safe houses, training/job placement, health services, and performs research.

Fundación de la Primera Dama. The Foundation of the First Lady of the Republic of Bolivia's mission is to develop support programs for high-risk social groups. The First Lady's Office has developed programs and projects for street children, rural and marginal urban students, people with disabilities, and the elderly. See Appendix E for more information.

Qharuru has 13 years of experience providing education, health, and other basic services, as well as vocational training, to working children in a center owned by the

organization in La Paz. In addition to the center, Qharuru implements other projects that have included research, a program with shoeshine children, development of night school curricula, and a theater program to prevent drug use.

Appendix D: Implementing Environment in Perú

I. Legal Framework

Child Labor Laws

In Perú, the legal minimum age of employment is 14; however, children between 12 and 14 may obtain permission from the Ministry of Labor to work four hours a day in light work. Adolescents aged 15–17 may work for six hours a day provided they are attending school regularly. In more hazardous sectors, such as mining, the legal minimum work age is 15. Work that can harm a child's physical, mental, or emotional health and development, including underground work, heavy lifting/carrying, and work that interferes with school attendance is prohibited under the age of 18.

Education Laws and Structure

In 1993, the Peruvian Congress extended the years of obligatory schooling to 13: three pre-school years (starting at age three) and a total of 10 years of primary and secondary school, to be phased in progressively. In order to phase in the additional years, it was planned to add one school year, each calendar year, over several years.

As part of the national education reform, the Ministry of Education has developed a model that moves away from teaching/instruction and puts emphasis on learning/training. It involves:

- A curriculum that takes local realities (including multiculturalism) into account.
- Flexibility for one third of the curriculum to be developed locally.
- An emphasis on solving concrete problems of every day life and improving the quality of life.

In the short run, the new approach will focus on factors affecting educational quality such as teacher training; production and distribution of free educational materials; expansion, improvement and maintenance of infrastructure; school director training, and social support programs such as distribution of food, furniture, and clothing.

In the medium run, the goal will be to expand the coverage of the education system (especially in the pre-school and secondary areas) in disperse rural areas, and to improve teaching methodology.

Goals in alternative education include modification of the primary and secondary curricula to be appropriate for the adolescent/adult population, a flexible, contextual, competency-based, modular curriculum, radio learning, day-care programs, supplemental nutrition programs, and the establishment of an accreditation system for technical education.

II. Extent and Nature of Child Labor

Statistics

- According to the Yearbook of Labor Statistics, in 1999, 5.5 percent of children in Perú between the ages of 10 and 14 and 44

percent of children between the ages of 15–19 were working (ILO, Geneva, 2000, Table 1A).

- On tests conducted by the Ministry of Education in 1998, of 25 departments, the Department of Puno (location of the proposed projects) was among the six with the lowest scores on three of the four tests.

- In most rural schools in Perú, class contact hours are inadequate (an estimated 200 hours/year compared with an average 1,050 hours/year for Latin America), many students are over-age for their grade, and there are high levels of absenteeism, repetition and dropout.

Type of Work in Which Children Are Engaged

The worst forms of child labor in Perú have not been formally identified, but children are most commonly found working in the agricultural sector, in garbage scavenging, in the loading and unloading of produce in markets, in fireworks factories, in urban centers working as shoe shiners, and in stone quarries. Working children and adolescents are also found making bricks, participating in informal mining-related activities, and being commercially exploited and exploited for sexual means.

III. Efforts

Government

The Ministry of Labor implements the *Projoven* (Proyouth) Program which helps low income youth enter the labor market through training and apprenticeship programs. The program, begun in 1996, has trained almost 25,000 youths in such technical areas as sewing/tailoring, administration, tourism, mechanics, carpentry, construction, bread making, shoe repair, agro-industry, and fishing.

The Ministry of Education has developed the *Intercultural Bilingual Education Program* to provide universal access to quality education, and nearly 5,000 teachers are being trained to address close to 100,000 students in eight languages. The Ministry of Education's Plan Huascarán will provide Internet access to all schools including rural schools.

PROMUDEH is promoting a new initiative, *Plan de Acción para la Infancia 2002–2006*. The plan will include efforts to protect child workers with a goal of the eventual elimination of child labor.

The National Plan to Eliminate Child Labor, developed by the *Comité Nacional para la Erradicación del Trabajo Infantil y Protección de Adolescentes que Trabajan* (National Committee for the Eradication of Child Labor and the Protection of Working Adolescents), has not yet been approved. In 2001, the Committee set up a number of sector sub-committees, including one on mining and one on education. The Committee has since become inactive, but the sub-committees continue to function and the sub-committee on mining has successfully brought the issue of child labor in the mining sector to national attention. Its members have formed a separate entity, the *Red de Minería Artesanal* (the Small-scale Mining Network) which has developed its own one-year action plan.

Ministerio de Promoción de la Mujer y Desarrollo Humano (PROMUDEH—Ministry for the Promotion of Women and Human Development). Through the National Institute of Family Well-being, PROMUDEH addresses populations at risk, such as children, adolescents, women and older adults living in poverty. PROMUDEH's *Educadores de Calle* Program (Street Educators) is made up of a team of young professionals who attend to at-risk populations, among them working children, to reintegrate them into family, school, and community.

International Donors

Through CARE, USAID began to work in education with the objective of improving opportunities for rural girls. Important accomplishments were raising social awareness, building a national network for girls' education called FLORECER, and passing a girls' education law. In 2002, USAID will implement pilot programs with new approaches to rural education, and in 2003, the World Bank will adapt lessons learned from the pilot projects to the remaining rural areas.

The International Labor Organization's International Program on the Elimination of Child Labor is implementing the USDOL-funded Program to Prevent and Progressively Eliminate Child Labor in Small-scale Traditional Gold Mining in Bolivia, Ecuador and Perú (referred to in this solicitation). In Perú, the project is working in Mollehuaca, Puno and Santa Filomena, focusing on awareness raising, institutional strengthening, education improvement, and withdrawal of children from mining.

UNICEF's program for 2001–2005 focuses on extremely poor and excluded children with a goal of equitable and inclusive public policies. Two programs have been developed:

(1) The *Initiatives for Social Inclusion Program* operates at the local level and emphasizes equitable access to health care, especially in early childhood; quality education; exercise of citizenship; and adolescent participation.

(2) The *Promotion and Monitoring of Rights Program*, at the national level, strengthens access to information and knowledge through three national projects.

UNICEF also implements the USAID-funded *Abriendo Puertas* (Opening Doors to Rural Girls' Education), a project initiated in 1999 to address the issues of rights, gender equality, bilingual/intercultural education and citizenship.

Private Sector

During the 1990s a "Law to Promote Investment in Education" (Legislative Decree 882) served as the legal framework to promote private sector support for education. The Ministry of Education has signed contracts with a number of large private corporations/companies and there is an increasing amount of private and municipal participation in education.

Generally, Peruvians invest a high level of personal income in education (*Peruvian Education at the Crossroads: Challenges and Opportunities for the 21st Century*, World Bank, 2001). One community that is part of the USDOL/ILAB South America Small-scale

Mining Project has conducted a fundraiser for school improvement, and members of another community have provided the labor to construct new classrooms. These investments reflect a national commitment to education as the path to development. Another positive sign for sustainability of interventions in Perú are nascent private sector (BellSouth) contributions for education programs and scholarships.

International NGOs in Perú

CARE-Perú, through the USAID project *Nuevos Horizontes para la Educación de las Niñas* (New Horizons for Girls' Education), organized the National Network for Girls Education and achieved congressional approval for the Law to Promote Education for Rural Girls. The law mandated universal school enrollment for rural girls; gender equity in teaching, infrastructure, and school management; and training for girls and families on psychosocial and reproductive health.

Save the Children (SAVE) has also implemented various studies involving education and child labor. In addition, *School Municipality* is a SAVE project in which children and adolescents participate democratically in school, and *Parent School* is a community school that helps raise parent awareness on child and human rights.

SAVE also works to integrate the goals of the Municipal Child and Adolescent Defense Offices (DEMUNA) with communities. These offices protect and promote the rights of children and adolescents, solve conflicts through conciliation, and promote strengthening of the family.

National NGOs in Perú

AIDECA offers technical improvements to eliminate the need for child labor in the USDOL/ILAB South America Small-scale Mining Project in Mollehuaca.

Centro Proceso Social (Social Process Center) is an organization in Lima working to help child trash pickers in the northern cone of Lima. The project has developed an approach for reinserting trash-picking children in school by using social educators to help with academic reinforcement and to conduct consciousness raising for parents.

Centro de Estudios Sociales y Publicaciones (CESIP), *Programa Derechos de Niños y Adolescentes* (Social Studies and Publications Center, Program on Children's and Adolescents' Rights). CESIP's mission is to reduce social inequality and inequity stemming from factors of gender, age, social class, and ethnic origin. CESIP has implemented part of the USDOL/ILAB South America Small-scale Mining Project in Mollehuaca with interventions covering such issues as school furniture, teacher training, and development of didactic material. Other CESIP programs address the prevention of child/adolescent labor through: School participation; child labor awareness raising with kids, teachers, parents groups, and community; improvement of educational quality through extracurricular activities; Saturday schools; and alternative income generation programs.

In a program for Bell South, CESIP developed a *mochila escolar* (school bag)

initiative called PRO NIÑO (Pro-Child) which supplies materials and resources to a selected group of children. The program's aim is to reintegrate children who have left school or to support those at risk of failing. The program includes a revolving fund for mothers of target children in exchange for reducing work hours or removing children from work and reenrolling them in school.

A new program *Beca Semilla* (Seed scholarship), also sponsored by Bell South, reinforces the participation of adolescents, promoting technical skills to enable participants to make occupational changes and leave the worst forms of work.

Centro de Investigación y Desarrollo de la Educación (Center for Education Research and Development) specializes in development research/publication and teaching innovations.

Confederación Nacional de Instituciones Empresariales Privadas (CONFIEP—National Confederation of Private Business Institutions). A special committee within this organization convened to look at social conscience issues and eventually became "Perú 2021." It is now an independent organization that serves as a model for involving the private sector in eradication of child labor.

Cooperación (Cooperation) is the NGO responsible for the USDOL/ILAB South America Small-scale Mining Project in Santa Filomena, Peru, where its representatives have focused on education and health as the most important elements in helping children attend and remain in school.

Cooperación has been successful in improving the quality of teaching. Before the intervention of the USDOL/ILAB South America Small-scale Mining Project, no high school existed and only 45 percent of children in the community attended school. Now, with the addition of a high school, 85 percent of children attend. Also in Santa Filomena, the high school and health posts constructed by the community have been adopted and taken over by the state. *Cooperación* used diagnostics and study results to leverage requests for support to regional government offices.

In Santa Filomena, *Cooperación* has incorporated local topics into the curriculum and developed a one-day per month "school for parents" that sensitizes parents to child labor issues. *Cooperación* has also taken advantage of "Seguro Escolar" (School Insurance), a program that provides health services to children up to age 17 if teachers verify they are attending school classes.

Foro Educativo (Education Forum) is an education think tank that generates applications through participative processes, then seeks to create consensus on the ideas to influence educational policy.

EDUCA, Instituto de Fomento de una Educación de Calidad (Institution for the Promotion of Quality Education). EDUCA's mission is the improvement of educational quality through creative approaches. EDUCA is an organization of teachers and other professionals committed to training other teachers and communities in how to transform institutions and practice to create Peruvian entrepreneurs.

Grupo de Iniciativa Nacional por los Derechos del Niño (GIN—National Initiative

Group for Children's Rights) is a network of 30 institutions, formed in the 1980s, to work in favor of children's rights. GIN performs follow-up on the implementation of the *Convenio de los Derechos del Niño* (Convention on the Rights of the Child) and conducts awareness raising campaigns against child labor.

Red por un Futuro sin Trabajo Infantil. (Network for a Future without Child Labor). This network includes fifteen institutions working on the eradication of child labor.

Red Titicaca, Instituto de Educación y Comunicación Puno (Titicaca Network, Education and Communication Institute, Puno) is implementing the DOL/ILAB South America Small-scale Mining Project in Puno. Its approach involves the entire community, including parents, leaders, authorities, and teachers. It emphasizes working with teachers who are discouraged and unmotivated. Workshops have improved the teachers' commitment and additional training is planned for the coming year. Awareness raising with parents increased their motivation to work for education and as a result they provided the labor for the construction of six classrooms.

Sindicato Unitario de Trabajadores en la Educación del Perú (SUTEP—Peruvian Teachers Union). Only 10,000 of Perú's public school teachers are not members of SUTEP, a union that counts 295,000 public school teachers in its membership. SUTEP has worked through the ILO using promoters to raise awareness on the eradication of child labor.

Tarea (Task) specializes in improving public education through policy, local development, and awareness raising.

Warma Tarinakuy developed a project in 1996 in a red-light district of Lima where children worked in the streets, semi-abandoned by their working parents. The project attempted to fill gaps in the continuity of schooling through non-formal education. Warma Tarinakuy also works with the children of gang members, on issues including cultural identity, self-confidence, and capacity building.

Appendix E: Background Material Available on the Web

Applicants desiring additional information and documents that can assist in the preparation of responses to this solicitation can find the following documents on the USDOL web site at <http://www.dol.gov/dol/ilab/public/programs/iclp/> or at the following web addresses:

1. Project Document for "Program to Prevent and Progressively Eliminate Child Labor in Small-scale Traditional Gold Mining in South America."
2. Bolivia Country Report.
3. Perú Country Report.
4. Programa IPEC-Minería Artesanal en América del Sur, "El Trabajo Infantil en la Minería Artesanal del Oro."
5. Estudios sobre el Trabajo Infantil en la Minería: Caso Potosí.
6. Piazza, Maria del Carmen, "Children Working in Small-scale Traditional Gold-Mining in Perú", 2001.
7. Zamora and Barrera, "Rendimiento escolar y estado nutricional," Ministerio de

Educación, Cultura y Deportes, (www.vieps.gov.bo).

8. Bolivia. CEBIAE. Centro Boliviano (<http://www.cebiae.edu.bo>).

9. UNESCO: Education for All Country Reports, (<http://www2.unesco.org/wef/countryreports/country—all.html>).

10. Bolivian Ministry of Education, (www.veips.gov.bo).

11. Fundación de la Primera Dama, (<http://www.pridama.gov.bo/despacho/despacho.htm>).

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DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor in Pakistan Through Education

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for Cooperative Agreement Applications (SGA 02-05).

This Notice Contains All of the Necessary Information and Forms Needed To Apply for Cooperative Agreement Funding.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. \$5 million in funds through a cooperative agreement to an organization or organizations to develop and implement an education project in Punjab province, Pakistan as a means to combat child labor. The education project will work towards reducing child labor by increasing school attendance, reducing school dropout rates and developing labor skills for older children in areas of high prevalence of working children. The program will integrate children removed from child labor into educational settings, and support improvements in the quality of transitional and non-formal education that precedes integration into the formal school system or vocational training. The program will build capacity and mobilize resources to complement the Government of Pakistan's National Plan to Combat Child Labor and Education Sector Reforms Action Plan.

DATES: The closing date for receipt of applications is July 9, 2002. Applications must be received by 4:45 p.m. (Eastern Standard Time) at the address listed below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be allowed. Applications that do not meet the conditions set forth in this notice will not be honored. Facsimile (FAX) applications will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library or online at <http://www.nara.gov/fedreg/nfpubs.html>. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N-5416, Attention: Lisa Harvey, References: SGA 02-05, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: harvey-lisa@dol.gov. All inquiries should reference SGA 02-05. All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free number), prior to the closing deadline. All inquiries should reference SGA 02-05.

SUPPLEMENTARY INFORMATION: The Bureau of International Labor Affairs (ILAB), U.S. Department of Labor (USDOL or Department), announces the availability of funds to be granted by cooperative agreement to expand access to education in Punjab province, Pakistan to children engaged in child labor or at risk of entering the work force. The cooperative agreement will be managed by ILAB's International Child Labor Program (ICLP), to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in using education as a means of reducing child labor in Pakistan.

I. Background and Program Scope

A. USDOL Support of the Global Elimination of Child Labor

The International Labor Organization estimates that there are 250 million working children between the ages of five and 14 in developing countries, about half of whom work full-time. Full-time child workers are generally unable to attend school, and from an early age part-time child laborers must balance economic survival with schooling, often to the detriment of their education.

The existence of child labor has many implications for a country. Education is a key investment that has been linked to the acceleration of a nation's productivity and socioeconomic development. Poorly educated workers tend to earn less, live in poverty, and may need to send their own children to work at a young age.

Since 1995, as mandated by the U.S. Congress, USDOL has supported a worldwide technical assistance program by the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC). USDOL contributions to date to ILO/IPEC have amounted to some \$112 million, making the United States the program's largest donor and a leader in global efforts to combat child labor. In USDOL's FY 2001 and FY 2002 appropriations, in addition to \$90 million in funds earmarked for ILO/IPEC, the Department received \$74 million for an Education Initiative that will fund programs that increase access to quality, basic education in areas with a high incidence of child labor. The cooperative agreement awarded under this solicitation will be funded by this new initiative.

USDOL's Child Labor Education Initiative nurtures the development, health, safety and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Child labor elimination will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and could resort to other forms of hazardous work.

The Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

B. USDOL Involvement in Combating Child Labor in Pakistan

USDOL's ICLP has been involved in combating child labor in Pakistan since 1997. Appendix C highlights some of the projects that USDOL has supported

in the country. In June 2001, the ICLP engaged in consultations with the Pakistan Ministries of Education and Labor to discuss means by which the Department could further support efforts to combat child labor with funding from the USDOL's Child Labor Education Initiative. These discussions led to an agreement between USDOL and the Ministry of Education to finance a U.S. \$5 million project to support the education of child laborers and children at risk of entering the child labor market in the province of Punjab, with interventions focusing on districts with a high incidence of child labor.

The USDOL project will operate within a complex implementing environment that is described in Appendix D. Key considerations within this implementing environment are the barriers to education that working children and those at risk of entering the work force must confront. Other significant factors are Government of Pakistan policy frameworks including the National Policy and Action Plan to Combat Child Labor and the Education Sector Reforms Action Plan, both of which identify strategies and support emerging approaches to addressing the issues of child labor and barriers to education.

The objective of USDOL's continued involvement in Pakistan and the funding provided under this solicitation is to: (1) Address barriers to education faced by working children or those at risk of working; (2) complement the Child Labor and Education Sector Reform Action Plans of the Government of Pakistan, and (3) build on the achievements and lessons learned by child labor and education projects that have already been implemented in that country. It is USDOL's intent that Child Labor Education Initiative funding be used to support the education component of child labor projects of organizations already combating child labor in Punjab province. It is also USDOL's intent to encourage innovative ideas from other organizations that would bring more of the targeted children into educational settings and prevent them from reentering the labor force.

C. Barriers to Quality Education for Working Children in Pakistan

Within the context of the implementing environment described in Appendix D, there are a number of obstacles and barriers that affect the decisions or ability of Pakistani families, and in particular families of working children, to send their children to school. The barriers have an impact on the high rate of dropout from school and

entry of children into the labor force at an early age also described in Appendix D. The applicant needs to consider these barriers in the development of responses to this solicitation. Some of the major *barriers to education* in Pakistan include:

1. Lack of Knowledge and Awareness

There are a number of factors in this category that act as impediments for working children to gain access to school. These include:

- Parents' illiteracy and resignation
- Parents of working children in Pakistan are often themselves uneducated or illiterate. Because of the multiple economic and social constraints that they and their children face, they are often reluctant to send their children to school rather than to work. Furthermore, they may also feel powerless to changing conditions that have reproduced themselves for generations, and that promote child labor. Given few other social or economic options, some families, including children themselves, may also highly value the contribution that children make to family survival.
- Lack of awareness by social partners of their potential role in reducing child labor and promoting school attendance

Many social partners including NGOs, the media, the military, the corporate sector, faith-based organizations and religious leaders, local authorities, Pakistani expatriates, and even private individuals may be generally aware of child labor or the lack of access of these children to school, but certain partners may not understand or have enough information on the effects of child labor on society, and on the specific deficiencies that manifest themselves in individual communities. They may also not know how they could contribute to concrete actions to reduce child labor and promote school attendance in those communities. Often more knowledge of specific needs may be a catalyst that enables social partners to act and to mobilize their respective networks to combat the problem and propose viable solutions.

- Lack of awareness of new child labor and education policies and strategies

National Child Labor and Education policies and action plans, and those of the President Musharraf's Task Force on Human Development (TFHD), are relatively new and may not be well known or understood by individuals, local leaders and communities. This knowledge includes the practical aspects of decentralization promoted in education sector reform, and the targets

and strategies that the government has chosen to reduce child labor and achieve Education for All Targets (to which the Government of Pakistan committed as part of the 2000 World Education Forum's Dakar Framework for Action). This lack of knowledge may inhibit effective implementation at the local level of national policies and plans.

2. Education System Constraints

There are a number of barriers of the education system that lead children to drop out of school and join the work force. These include:

- Lack of knowledge on children's education needs

Children have different learning styles and abilities. If these differences are not understood, teachers and the school system may not be able to improve and maximize learning outcomes. For example, preliminary research by UNICEF in Punjab indicates that some children may drop out early and enter the labor force because of learning disabilities. Girls and boys, particularly those who work or who have been removed from work, may need specific approaches to ensure their more effective attendance and participation in school. Yet many teachers and school administrators in Pakistan may not fully understand these factors that would lead to a more successful integration or reintegration of children into school settings.

- Irrelevant curriculum

A recent study in Pakistan indicated that irrelevant curriculum and harsh conditions of learning contribute to a low completion rate and a high drop out rate (SPARC, *The State of Pakistan's Children, 1999*, Islamabad, January, 2000, p. 19). A common method of teaching in Pakistan is based on the rote memorization of lessons with little or no attention given to the student's cognitive development and skills associated with reading, writing, math and science, and their eventual practical application to life and work. With school having such little relevance to the improvement of their lives, many parents may feel that it is unnecessary to send their children to school because the education they are receiving is not preparing them for a productive future. The children are then removed from school and enter the work force.

- Inadequately trained teachers with low motivation

Teachers in government-sponsored schools (where many working children or children at risk of working attend) are largely untrained, under-paid and have little or no previous classroom experience before being hired. In

Pakistan, hiring of teachers and school administrators may be based on favoritism rather than skills. Many teachers are not familiar with curriculum development or basic classroom instruction. Even teachers working for NGOs involved in child labor projects have had relatively little training. Furthermore, many rural teachers face difficult working conditions with large class sizes in one room requiring the teacher to be involved in multi-grade instruction. At the same time lack of supervision, training and motivation by school administrators exacerbates high teacher absenteeism. Under these conditions, it is not surprising that child labor may appear to be a better option for families.

- Limited access to quality vocational education

The parents of many older children and the children themselves often realize that they cannot or will not finish primary school and continue onto secondary or university education. Often technical or vocational education is a preferred option. In Pakistan there are many challenges to obtaining good vocational education. Government programs are not sufficient relative to need, are not necessarily of high quality, nor do they lead to employment in leading sectors. They also tend to focus on preparing boys. Programs run by the private sector or employers associations, such as the Skills Development Council of Punjab, tend to be of higher quality and lead to better employment after completion. This is in part because of the labor market research done by the private sector before launching skills training programs. Yet working children may not be able to gain access to these programs because they are unaffordable, or because they do not meet minimum literacy and numeracy requirements. If they are school dropouts, they likely do not meet the minimum age or prerequisite academic standards. Ill prepared academically and unable to obtain more desirable and marketable skills, older children, although still below legal working age, may have little recourse than to enter into less attractive apprenticeships or employment that may be exploitative and abusive.

3. Institutional and Policy Challenges

- Lack of data on educational access and performance to inform policy

There are many challenges to estimating the number of children engaged in child labor, and even less is known about their education needs, and the correlations among school attendance and performance, drop out and child labor. This is one reason why Government of Pakistan action plans on

child labor and education identify database and information collection as areas of need. Lack of data is a major gap to developing improved policies and programs.

- Limited coordination among social actors

Pakistan's National Policy and Action Plan to Combat Child Labor highlights the importance of coordination among social actors. The experience of the National Steering Committee formed as part of ILO/IPEC efforts to address child labor show that it is a continuing challenge to achieve and sustain coordination, particularly at both national and provincial levels, among different government agencies, non-governmental organizations and employers.

- Limited local government capacity to implement devolution and decentralization of education

Although decentralization of education has begun as part of the sector's reform, it will test the abilities of local government structures. These organizations may not have experience or capacity in many areas such as educational planning, resource allocation, monitoring, and accountability to communities for educational quality.

- Limited community capacity to implement decentralization and improve monitoring and performance of education

The education reform counts on community structures and organizations to improve educational quality and performance. For example, the Local Government Ordinance of 2001 calls for the establishment of Citizen Community Boards and Monitoring Committees in order to ensure effective community participation. Other community organizations include School Management Committees (SMCs), School Councils, Community Public Partnerships (CPPs), Parent Teacher Associations (PTAs) and mother's groups. Yet in many communities in Punjab province these organizations are non-existent, embryonic or weak.

The level of inequality found in the rural areas of Punjab also affects community capacity to monitor the quality of education. The rural population tends to be marginalized from the county's mainstream economy and political influence. A majority of children in rural areas in Punjab enroll in government-sponsored schools, many of which are not suited to deliver quality education. Those at the bottom of the social ladder may also feel powerless to influence the quality of the education received by their children. This phenomenon explains the

emphasis that Child Labor and Education Sector Reform Action Plans give to community mobilization and empowerment.

4. Resource Constraints

- Poverty and the inability to pay fees associated with school attendance

One reason for the high school dropout rate is that parents with low wages are unable to cover the fees associated with paying for textbooks, supplies and other school costs. In Pakistan these direct costs can reach up to 20 percent of a family's income, making education unaffordable to many families. When these fees are compounded with the lost wages of the child removed from labor, the costs are prohibitive and are a disincentive to school attendance.

- Nonexistent or poor school infrastructure

The abject condition of Pakistan's physical school infrastructure due to misappropriation or lack of resources has also seriously weakened the country's education system. According to the U.S. Embassy in Islamabad (U.S. Embassy, Pakistan, "*The Dismal State of Education in Pakistan*," p. 3), it is estimated that in Pakistan there are 19,000 schools that do not have any type of formal structure and are simply known as "shelter-less" schools. Furthermore, in some places there are no schools or "ghost schools" that should have been constructed but were not because of misappropriation of resources. The Embassy also reports that approximately 93,000 schools have no electricity, 68 percent lack running water, and 70 percent lack latrines. The lack of proper hygienic facilities has played a key role in parents not allowing their daughters to attend school.

In the case of child workers or children removed from labor, there may not be alternative schools or infrastructure to support non-formal or transitional education that precedes their integration into formal or vocational school. For these children the Ministry of Education has encouraged the use of government school facilities. The infrastructure at these facilities is often deficient. Also, since classes are often held outside of normal school hours children may be too tired after work to fully concentrate. Children may thus not even complete non-formal and transitional programs and return to child labor.

- Limited resources for education

Although the public sector resources devoted to education have dramatically increased under the education sector reform plan, they are still insufficient

relative to need and the Government of Pakistan has admitted that the public sector cannot do it alone. In the case of resources devoted to the education of child laborers, these resources have also been limited when compared to needs. Schools that have opened under child labor projects have tended to generate demand for education by families of children not included in the project. For example, many of the beneficiaries of the schools for child carpet weavers are girls. Although parents have enthusiastically enrolled them in project-sponsored schools, they also complain that there are no similar facilities for their boys who may not be able to go to school at all. Because of resource constraints the government has encouraged other alternatives that mobilize resources for education. These include those that bring in the private sector and civil society as detailed in Appendix D.

All of the above-cited barriers to school attendance manifest themselves acutely in the province of Punjab where this project will be implemented. Punjab has one of the largest populations in Pakistan and one of its most widespread problems is illiteracy. A 1998 government census reported the total literacy rate for rural areas in Punjab to be just above 40 percent, while the literacy rate in urban areas of the province is nearly 65 percent. The recent National Literacy Campaign, which is being sponsored by the government and will run from 2001–2004, is aimed at increasing literacy and granting access to quality education.

II. Authority

ILAB is authorized to award and administer this program as set forth in the Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763A–10 (2000).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization capable of successfully developing and implementing education programs for child labor is eligible for this cooperative agreement. Although only one cooperative agreement will be awarded, partnerships of more than one organization are also eligible, and applicants are strongly encouraged to consider working with organizations already in Pakistan (See Appendix E). In the case of partnerships, a lead organization must be identified. The capability of an applicant or applicants to perform necessary aspects of this

solicitation will be determined under the Rating Criteria.

Please note that eligible cooperative agreement applicants must not be classified under the Internal Revenue Code as a 501(c)(4) Entity. See 26 U.S.C. 501 (c)(4). According to section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application in English plus two (2) copies of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, July 9, 2002. Accompanying documents must also be in English. To aid with review of applications, USDOL also encourages applicants to submit two additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A-F of the Budget Information Forms SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work and the selection criteria.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts, not to exceed 30 single-sided (8 1/2" x 11"), double-spaced, 10–12 pitch typed pages. **ANY APPLICATIONS THAT DO NOT CONFORM TO THESE STANDARDS MAY BE DEEMED NON-RESPONSIVE TO THIS SOLICITATION AND MAY NOT BE EVALUATED.** Standard forms and attachments are not included in the page limit. Each application must include a table of contents and an abstract summarizing the proposal in not more than two (2) pages. These pages are also not included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by

the date and time specified or it will not be considered. Any application received at the Office of Procurement Services at 4:45 pm Eastern Time, July 9, 2002, will not be considered unless it is received before the award is made and:

1. it was sent by registered or certified mail not later than the fifth calendar day before July 9, 2002;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to July 9, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the

applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free number), prior to the closing deadline. All inquiries should reference SGA 02-05.

D. Funding Levels

Up to US \$5 million is available for this program. Although USDOL will award only one cooperative agreement (hereafter referred to as "grant"), a partnership of more than one organization may apply to implement the program. (See Section III.B, Submission of Applications).

E. Program Duration

The duration of the activities funded by this SGA is four (4) years. The start date of activities will be negotiated upon awarding of grant.

IV. Requirements

A. Statement of Work

The applicant will propose creative and innovative approaches aimed at reducing child labor in Pakistan by increasing school attendance and developing youth labor skills in areas of high prevalence of economically active children. In proposing approaches the applicant should explain how the activities or services provided under this grant will address the barriers to education cited in Section I.C above and, where relevant, suggest ways to use emerging approaches to address these barriers (see Appendix D). The project's geographical target area is the province of Punjab, which has a high incidence of child labor and low educational access. The project may include the districts of Faisalabad, Kasur, Gujranwala, Sheikhupura and other districts to be determined with the Ministries of Education and Labor during the first three months of the project. The exact number of communities and children to benefit from this Education Initiative project will be identified in collaboration with local authorities, and will support Pakistan's decentralization and devolution strategies, the federal Ministry of Education's Education Sector Reforms Action Plan, and the Ministry of Labor's Action Plan on Child Labor. The number of communities and beneficiaries chosen should correspond to the budget proposed for the major activities

deemed essential to desired project outcomes.

In developing a proposal, the applicant should take into account the challenges to preventing child labor, reintegrating working children into educational settings, promoting school attendance, addressing the high dropout rate, and improving school relevance. They should also consider the implementing environment in Pakistan outlined in Appendix D of this solicitation, and background information (See Appendix F) available from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693-4570 (this is not a toll-free number), e-mail address: harvey-lisa@dol.gov. All inquiries should reference SGA 02-05.

The applicant will propose approaches that will meet the education needs of the identified target beneficiaries in Pakistan: (1) Children of primary school age (ages five-ten) through grade 5 at risk of dropping out of school and entering child labor, (2) children under age 10 not attending school and already engaged in child labor, and (3) older youth (ages 10-18) requiring pre-vocational and vocational education to enhance job and self-employment skills. The approach suggested by the applicant will include actions that promote an enabling environment at the national and provincial levels, and specific interventions at the local level in support of the education of target children. The expected outcomes of the project will be to: (1) Decrease school dropout of primary school aged children who are at risk of entering the labor force by increasing the quality of education; (2) increase educational opportunities (including mainstreaming into the formal school or vocational system) for primary school age children who have dropped out of school and have entered the labor force; and (3) increase access of older children (above age ten) to skills and vocational education leading to improved employment at legal working age. Within these groups, special attention should be given to children in the worst forms of child labor. The applicant is also encouraged to include as project beneficiaries children in areas where USDOL-funded IPEC project are operating. (See Appendix C).

The project shall support the goals of USDOL's Child Labor Education Initiative: (1) Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures; (2) Strengthen formal and transitional education systems that

encourage working children and those at risk of working to attend schools; (3) Strengthen national institutions and policies on education and child labor; and (4) Ensure the long-term sustainability of these efforts.

In order to *avoid duplication, enhance collaboration, expand impact, and develop synergies*, the organization(s) awarded the cooperative agreement (hereafter referred to as "Grantee") will consult with Pakistani stakeholders in developing project interventions. The Federal Ministry of Education is the lead ministry for this initiative, but close coordination and consultation will also be required with the federal Ministry of Labor, Secretary of Labor and Manpower-Punjab, Punjab Commission for Child Welfare and Development, the village, local and District Coordination Officer, non-governmental organizations, national steering/advisory committees on child labor and education, and child laborers, those at risk and their families.

Below is a summary of specific requirements to guide applicants in the development of responses to this solicitation. Although the USDOL is open to all proposals for innovative solutions to address the challenges of providing access to education to the target population, the applicant must at the minimum propose approaches to address barriers to education in the following areas of implementation:

1. Awareness raising to reduce child labor and promote school attendance

This component aims to use awareness raising campaigns to inform and mobilize strong local and national commitment to support concrete actions that reduce child labor and promote school attendance.

a. Development of communication strategy. The applicant should propose an approach to develop a communication strategy to raise awareness and influence behavior of multiple key actors to promote school attendance and reduce child labor. On the basis of the strategy, the applicant should propose key audiences for awareness raising campaigns.

b. Approaches to community mobilization. The applicant should suggest approaches to mobilize local communities to increase parental participation and encourage the establishing and strengthening of community structures. The approach can include ideas to promote the development of working and task-oriented multi-sectoral or public-private partnerships at the community and regional levels to combat child labor, promote school attendance, and improve education infrastructure in

areas of high incidence of child labor. The suggested approach should support Pakistan's decentralization and devolution process, and Local Government Ordinance of 2001.

c. Mobilization of Pakistani expatriates. The applicant should propose how to support the Ministry of Education's newly developed initiative aimed at facilitating support to education in target areas of project intervention by Pakistani expatriates. The applicant should propose how to coordinate this strategy with the Ministry of Labor and Overseas Pakistanis.

2. Strengthening of education systems to reduce child labor, promote school attendance, and reintegrate child laborers into education settings

Strategies to strengthen the education systems to address needs of target children should focus on: (1) Younger children still within the formal education system to prevent their dropout into child labor and increase their completion of primary school; (2) out-of-school children of primary school age who are working, and (3) older children (above age 10) to either reintegrate them into school, or improve their job and self-employment skills once they reach legal working age. The latter approach may have to vary depending on the age of the children and their former experience in the education system. As part of its proposed strategies the applicant should suggest activities in the areas listed below and, if deemed important, alternate innovative areas not identified in this solicitation.

a. Identification of beneficiaries. The applicant should propose an approach to identify the number and location of target communities, interventions and the numbers of children to be targeted. The applicant should propose an approach to collect baseline data on these beneficiaries.

b. Professional development for teachers and administrators. The applicant should identify how to improve the knowledge, skills, morale and professionalism of teachers and education administrators so that they may better address the education needs of the target population, especially children who have dropped out to work or have never been to school. To encourage sustainability, suggested approaches to teacher training should indicate what links might be forged with existing teacher training institutions in Pakistan.

c. Methods to assess learning, aptitudes and skills. The applicant should suggest a simple, yet effective approach to assess the learning,

aptitudes and skills of children to be targeted by the project. In developing the approach, the applicant should indicate how it would design the program so that it relates to the goals of Pakistan's National Education Assessment System (NEAS). The applicant should also identify what instruments it might use for data collection, how the data would be synthesized, and how it would be fed back to educators and planners working in the areas of education and child labor.

d. Development of targeted vocational education programs. The applicant should suggest approaches to develop and implement pre-vocational and vocational training skills for employment and self-employment that lead to enhanced future employability of youth. The applicant should also suggest what approaches might be used for job placement or self-employment after training.

e. Development of school enrichment programs. The applicant should suggest means to develop school enrichment programs or other programs that would motivate parents to send their children to school. The approaches suggested should be innovative and can include public-private partnerships, development of volunteer programs, or other incentives.

3. Strengthening of institutions and policies to reduce child labor, promote school attendance, and reintegrate child laborers into education settings.

This component should promote approaches to create accountability mechanisms to document the problem and monitor (in partnerships with civil society organizations) the progress in reaching target communities in the prevention of child labor through school retention, and reintegration of children into education settings in lieu of work. The purpose of institutional strengthening would be to develop responsive, participatory and accountable systems of educational governance and management that directly impact the education of target children. Specifically the applicant should propose approaches to implementation in the following areas:

a. Data Collection and Policy Analysis. The applicant should suggest an approach to improve the capacity of governmental and non-governmental organizations to collect data to inform policy on education and child labor and allocate government resources to further increase the quality of education. These data could include correlations among school attendance, performance, dropout and child labor. The approach should take into consideration data

collection systems of the Ministries of Education and Labor.

b. *Strengthening Capacity to Implement Decentralization.* The applicant should suggest which major institutions and individuals could be targeted, and what types of capacity building activities could be undertaken to enable them to engage in actions that benefit target children and their families and support the Ministry of Education's decentralization strategy. As part of this approach the applicant should propose how the project could provide assistance to strengthen the capacity of community organizations or form new ones that would effectively advocate for quality education for target children.

c. *Strengthening of Monitoring Capacity.* The applicant should suggest approaches to strengthen the capacity of government and key civil society and community organizations to monitor and follow up on the education of child laborers and children at risk of being recruited into the work force. The applicant should suggest how community monitoring would complement and strengthen government monitoring, and how this capacity would be developed.

d. *Facilitation of Inter-Institutional Coordination.* The applicant should suggest what approaches could be used to facilitate and enhance inter-institutional coordination capacity of major actors working in education and child labor. These would include governmental and non-governmental organizations. Specifically, the applicant will identify what would be the expected outcome of the improved coordination (e.g., improved implementation of existing policies and laws on school attendance and child labor in target areas of project intervention; coordinated planning, etc.).

4. *Resource Mobilization.*

This component will build capacity to mobilize resources for public or other schools in areas of high child labor where project interventions are located.

a. *Internal Resource Mobilization.* The applicant should suggest ways to mobilize resources for education within Pakistan such as through public-private partnerships like the Adopt-a-School programs (see Appendix D), corporate and private sector contributions and philanthropy, volunteer programs, and resource mobilization by community and faith-based organizations. These resources would be used specifically to address the education needs of child laborers and children at risk of entering child labor. The approach suggested should include ways in which gaps and barriers to the education of target

children would be identified; how education infrastructure might be built and/or repaired; what incentives would be provided for training and professional development of school staff members, and how schools supported by these efforts would make education relevant and inclusive of those children who have been traditionally excluded from quality education.

b. *Cost of Schooling.* Since the direct cost of schooling is a major problem for families of working children in Pakistan, the applicant will propose approaches to address this impediment.

c. *Mobilizing Resources from Overseas Pakistanis.* The applicant should propose a mechanism to support and implement the Ministry of Education's newly developed initiative aimed at facilitating support to education by Pakistani expatriates. The applicant should show how the proposed approach would be linked to the awareness-raising strategy previously proposed, and how it would be targeted specifically to schools benefiting from the project interventions.

In implementing the proposed scope of work, the applicant should design approaches that encourage sustainability of impact on individuals, organizations and system-wide.

In addition to meeting these requirements, the Grantee also will be expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and evaluate program results. The grant will include funds to plan, implement and evaluate programs and activities, conduct various studies pertinent to project implementation, and to establish education baselines to measure program results. The Grantee must develop annual work plans that will be approved by USDOL. Corresponding indicators of performance will also be developed by the Grantee and approved by USDOL.

B. *Deliverables*

Unless otherwise indicated, the Grantee must submit copies of all required reports to ILAB by the specified due dates. Other documents, such as project design documents, are to be submitted by mutually agreed upon deadlines.

1. *Project Design.* A project document to be established by ILAB in the logical framework format will be used, and will include a background/justification section, project strategy (objectives, outputs, activities, indicators, means of verification), project implementation timetable and project budget. The project design will be drawn from the proposal written in response to this solicitation and negotiations with ILAB

on final design. The document will also include sections that address coordination strategies, project management and sustainability. The time for delivery of this document will be negotiated at the time of the award.

2. *Technical and Financial Progress Reports.* The Grantee must furnish a typed technical report to ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. The Grantee must also furnish a separate financial report (SF 272) to ILAB on the quarterly basis mentioned above. The format for the technical progress report will be the format developed by ILAB and must contain the following information:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

b. An accounting of staff and any subcontractor hours expended;

c. An accounting of travel performed under the cooperative agreement during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived;

d. A description of current problems that may impede performance, and proposed corrective action;

e. Future actions planned in support of each project objective;

f. Aggregate amount of costs incurred during the reporting period; and

g. Progress on indicators (to be reported annually).

3. *Annual Work Plan.* An annual work plan will be developed within two months of project award and approved by ILAB so as to ensure coordination with other relevant actors in Pakistan. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. *Monitoring and Evaluation Plan.* A monitoring and evaluation plan will be developed, in collaboration with ILAB, including beginning and ending dates for the project, planned and actual dates for mid-term review, and final end of project evaluations. The plan will identify indicators of performance to be reported annually. The monitoring plan will be prepared after completion of baseline surveys, including revision of indicators provided in project document, targets, and means of verification.

5. *Evaluation Reports.* The Grantee and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The Grantee must respond to any comments and recommendations

resulting from the review of the mid-term report.

C. Production of Deliverables

1. *Materials Prepared Under the Cooperative Agreement.* The Grantee must submit to ILAB all media-related and educational materials developed by it or its sub-contractors before they are reproduced, published, or used. ILAB considers that educational materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee must obtain prior approval from the Grant Officer from all materials developed or purchased under this cooperative agreement. All materials produced by Grantee must be provided to ILAB in a digital format for possible publication by ILAB.

2. *Acknowledgement of USDOL Funding.* In all circumstances the following must be displayed on printed materials:

“Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E-9-X-X-XXXX.”

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

1. The percentage of the total costs of the program of project which will be financed with Federal money;
2. The dollar amount of Federal funds for the project or program; and
3. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL's role will be identified as one of the following:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If ILAB determines the use of the logo is not appropriate and does not give written permission, the following notice must appear on the document: “The document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.”

D. Administrative Requirements

1. *General.* Grantee organizations are subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. The cooperative agreement awarded under the SGA is subject to the following administrative standards and provision, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. *Sub-contracts.* Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928 and 13021 as amended, the Grantee is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. *Key Personnel.* The applicant shall list individual(s) who has (have) been designated by the Grantee as having primary responsibility for the conduct and completion of all project work. The applicant will submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee agrees

to inform the GOTR whenever it appears impossible for these individual(s) to continue work on the project as planned. The Grantee may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the Grantee before or after the cooperative agreement obligations period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period shall be liquidated within 90 days after the end of the grant period, if practicable.

5. *Site Visits.* USDOL, through its authorized representatives, has the right at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of a Grantee or sub-contractor(s) under this grant, the Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applications for Grant Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applications are advised that the panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee(s) on the basis of the

initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make final selection determination based on what is most advantageous to the Government, considering factors such as: panel findings and the availability of funds, and other factors. The Grant Officer's determination for award under this SGA 02-05 is final.

Note: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

B. Rating Criteria and Selection

The technical panel will review applications against the various criteria on the basis of 100 points with an additional five points available for non-federal or leveraged resources.

The factors are presented in the order of emphasis that they will receive.

1. Approach, Understanding of the Issue, and Budget Plan (40 points).

a. *Overview.* This section of the proposal must explain:

(1) The applicant's proposed innovative method for performing all the specific areas of work requirements presented in this solicitation.

(2) The expected outcomes over the period of performance for each of the tasks; and

(3) The approach for producing the expected outcomes.

The applicant must describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation, including all tasks and methods to be utilized to implement the project. Also, the applicant must explain the rationale for using the approach. In addition, this section of the application must demonstrate the applicant's thorough knowledge and understanding of the issues involved in providing education to children engaged in child labor or those at risk of being recruited into the labor force; best-practice solutions to address their needs; and the implementing environment in Pakistan.

b. *Implementation Plan.* The applicant must submit an implementation plan, preferably with a visual such as a Gantt chart for the project in Pakistan. The implementation plan should list the outcomes, objectives and activities during the life of the project, and scheduling of time and staff starting with the execution of the grant and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the project. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions, and indicating proposed links with Government, civil society leaders, educators, and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective of reducing child labor in Pakistan through education.

(3) Explain how appropriate awareness raising, training and pedagogic materials will be developed.

(4) Demonstrate how the organization will strengthen national institutions and policies on education and to combat child labor.

(5) Demonstrate how the organization would systematically report on project performance to measure the achievement of the project objective(s).

(6) Demonstrate how the organization would build national and local capacity to ensure project efforts to reduce child labor and the effects of child labor through the provision of education are sustained after completion of the project.

c. *Budget Plan.* Develop a country-specific budget of up to US \$5 million for the implementation of the project in Pakistan. This section of the proposal must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, equipment, travel, and other related costs. Preference may be given to applicants with lower administrative costs.

d. *Management and Staff Loading Plan.* This section also must include a management and staff loading plan. The management plan is to include the following:

(1) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and sub-contractors or consultants who will be retained;

(2) A description of the functional relationship between elements of the project's organization; and

(3) The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

2. Experience and Qualifications of the Organization (35 points).

The evaluation criteria in this category are as follows:

a. The organization applying for the award has experience in basic, non-formal and vocational education programs that address issues of access, quality and policy reform for working children.

b. The organization has a field presence in Pakistan, or could rapidly establish an office that gives it the capability to work directly with government ministries, educators, civil society leaders, and other local organizations, e.g., community-based or faith-based groups; the organization can document that it has already established relations of this nature in Pakistan or can show that it has the capacity to readily establish such relations.

The proposal must include information about previous grants or contracts relevant to this solicitation including:

a. The organization for which the work was done;

b. A contact person in that organization with their current phone number;

c. The dollar value of the grant, contract, or cooperative agreement for the project;

d. The time frame and professional effort involved in the project;

e. A brief summary of the work performed; and

f. A brief summary of accomplishments.

This information on previous grants and contracts shall be provided in

appendices and will not count in the 30-page maximum page requirement.

3. Experience and Qualifications of Key Personnel (25 points).

This section of the application must include sufficient information to judge the quality and competence of staff proposed to be assigned to the project to assure that they meet the required qualifications of the individuals committed to the project. Accordingly, in its evaluation of the applicant's application, USDOL will place emphasis on the applicant's commitment to personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

a. The identity of Key Personnel assigned to the project. "Key Personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or subcontracting. Key Personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

a. The applicant must designate a Project Director (Key Personnel) to oversee the project and be responsible for implementation of the requirements of the cooperative agreement. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; approaches to decentralization of education; improving educational quality and access; teacher training and materials development; education assessment of

disadvantaged students; development of community participation in the improvement of basic education; and monitoring and evaluation of basic education projects. Points will be given for candidates with additional years of experience. Preferred candidates will also have knowledge of child labor issues and experience in the development of non-formal, formal, and vocational education of children removed from child labor.

b. The applicant must designate an Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person shall have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person shall have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with child labor, psychosocial counseling, education statistics, vocational education of child removed from child labor, and education monitoring and evaluation is an asset.

c. The applicant must specify other personnel proposed to carry out the requirements of this solicitation.

d. The applicant must include a description of the roles and responsibilities of all personnel proposed for this project and a résumé for each professional person to be assigned to the program. Résumés will be attached in an appendix. At a minimum, each résumé must include: The individual's current employment status and previous work experience, including position title, duties performed, dates in position, and employing organizations and educational background. Duties must be clearly defined in terms of role performed, *i.e.*, manager, team leader, consultant, etc. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

e. The applicant must indicate whether proposed personnel are currently employed by the organization or are dependent upon planned

recruitment or sub-contracting. Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control must be clearly delineated to ensure responsiveness to the needs of USDOL.

4. Leverage of Federal Funding (5 points).

The Department will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the proposal. Of special interest is organizations' ability to provide income-generation and/or credit programs or other material incentives to benefit families of target children, or for older children who complete education programs and are ready for self-employment. These programs will not be financed by the project, but can supplement and enhance project objectives. The applicant may include any leveraging or co-funding anticipated. To be eligible for the additional points in the criterion, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, *etc.*

Signed at Washington, DC, this 17th day of May 2002.

Lawrence J. Kuss,
Grant Officer.

List of Appendices

Appendix A. SF 424—Application Form.

Appendix B. SF 424A—Budget Information Form.

Appendix C. Background Information on USDOL-Funded Projects in Pakistan.

Appendix D. Implementing Environment in Pakistan.

Appendix E. Organizations Involved in Education and/or Child Labor in Pakistan.

Appendix F. List of Background Materials Available Upon Request.

BILLING CODE 4510-28-P

Appendix A: SF 424 - Application Form.

**APPLICATION FOR
FEDERAL ASSISTANCE****APPENDIX "A"**

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
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, telephone number and fax number of the person to be contacted on matters this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 	7. TYPE OF APPLICANT: (enter appropriate letter in box) A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipality J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District 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: 	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:	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												
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%;"></td> <td style="width: 10%; text-align: right;">.00</td> </tr> <tr> <td>b. Applicant</td> <td style="text-align: right;">\$</td> <td></td> <td style="text-align: right;">.00</td> </tr> <tr> <td>c. State</td> <td style="text-align: right;">\$</td> <td></td> <td style="text-align: right;">.00</td> </tr> </table>	a. Federal	\$		.00	b. Applicant	\$		.00	c. State	\$		.00	
a. Federal	\$		.00										
b. Applicant	\$		.00										
c. State	\$		.00										

d. Local	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
e. Other	\$.00		
f. Program Income	\$.00		
g. TOTAL	\$.00		
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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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 which you are required to provide with W2 forms.

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 on trip to Washington, DC for project director of designee.

4. *Equipment*: Indicate the cost of non-expanded personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more. Also include a detailed description of equipment to be purchased including price information.

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 line 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: Background Information on USDOL-Funded Projects in Pakistan

The United States Department of Labor has funded several child labor projects in Pakistan, which are detailed below.

Elimination of Child Labor in the Soccer Ball Industry in Sialkot (US \$1.8 million, 1997). The primary objective of the project is to prevent and eliminate child labor in the production of soccer balls in Sialkot through workplace monitoring and provision of alternatives to children and their families. The project, which is a result of an agreement between the Sialkot Chamber of Commerce

and Industry (SCCI), ILO and UNICEF, has achieved several important results. Manufacturers who participate in the project have shifted their production of soccer balls from homes to stitching centers that are registered and monitored by the ILO/IPEC. Over 90 percent of the soccer ball export production is being monitored through this program. IPEC monitors conduct unannounced inspections of the centers to ensure that children are not stitching soccer balls.

The project has succeeded in removing more than 6,000 children from soccer ball stitching and providing them with non-formal education and/or skills training. Over 1,900 of these children have been mainstreamed into the formal education system. The project, currently in its second phase, continues to provide education to former child laborers, as well as any new children found working in the industry. In addition, 2,000 parents of former child stitchers will benefit from income generating activities. One of the objectives of the second phase of the project is to plan for a sustainable phase out strategy for IPEC. To that end, the project will work to establish a local independent monitoring body to succeed the current IPEC monitoring system. This project has benefited from the continued support and active participation of the SCCI in addressing the issue of child labor in the soccer ball industry. The industry has contributed about US \$400,000 to project activities. They have also established the Child and Social Development Program within SCCI to ensure that child labor and other social issues are addressed effectively in the industry.

Combating Child Labor in the Carpet Industry (US \$2 million, 1999). This three-year project seeks to reduce the incidence of child labor in the carpet sector in Punjab. Working in partnership with the Pakistan Carpet Manufacturers and Exporters Association (PCMEA), the project has established a monitoring system to identify working children and ensure their gradual withdrawal from carpet weaving. Approximately 8,000 carpet-weaving children aged 14 and below and 2,000 of their younger siblings are targeted for non-formal education. Children will also benefit from other support services including health, recreation, and counseling. In addition, 2,000–3,000 parents of carpet-weaving children will receive training and access to micro-credit to start their own income-generating enterprises.

To date the project has managed to provide nearly 8,000 children with non-formal education and prevented about 1,000 younger siblings from entering work. More than 100 children have been mainstreamed into the formal education system. Based on surveys conducted in the two districts, the number of carpet weaving children far exceeds the project's target group. USDOL is exploring funding a second phase to the project, which would expand services provided to include additional carpet weaving children in the two current districts of Sheikhpura and Gujranwala, as well as expanded program activities to cover additional areas in Punjab where carpet-weaving takes place.

Appendix D: Implementing Environment in Pakistan

Although Pakistan's Employment of Children Act of 1991 prohibits the employment of children less than 14 years of age in occupations deemed to be hazardous to their health, according to Pakistan's National Policy and Action Plan to Combat Child Labor a National Child Labor Survey conducted in 1996 found about 3 million children aged five to 14 engaged in child labor in Pakistan (see Government of Pakistan, The Child Labour Unit of the Ministry of Labor, Manpower and Overseas Pakistanis, *National Policy and Action Plan to Combat Child Labor*, Islamabad, n.d., p. 10). Punjab province alone accounts for about 59 percent of the total child labor in Pakistan. Most of these children worked on a full-time basis. In 1999, the ILO estimated that 16 percent of children between the ages of 10 to 14 in Pakistan were working.

In Pakistan, children are most commonly found working in the agricultural and manufacturing sectors, in the manufacture of soccer balls, surgical instruments, textiles and bricks. They also work in automobile workshops, and tanneries. There are reports that some children and their families are part of a system of debt bondage in the brick kilns. Children also engage in garbage scavenging and carpet weaving, and are used in the smuggling of contraband and drugs.

In the province of Punjab, where this project will be implemented, a survey by the Punjab Labor and Manpower found that 54 percent of children enter the workforce to assist household enterprises; 27 percent enter to supplement household income; and 14 percent are the family's sole income earners. The majority of children have been employed in the surgical instruments industry, football-manufacturing sector, steel furnace and spare parts sector, as well as in auto repair workshops and brick kilns. At home, girls are generally employed in work such as carpet weaving. About 80 percent of Pakistan's carpet production takes place in the province of Punjab. Since poverty is so widespread in the rural areas there is little opportunity for children to attend school and a majority must turn to carpet weaving as a source of income. The children, mostly young girls, work an average of six to 10 hours per day and earn less than a dollar a day.

The extent of child labor in Pakistan has engaged Pakistani and international organizations to take action to reduce and/or eliminate it. In March 1998, the Government of Pakistan established a Task Force on Child Labor to formulate policies on the elimination of child and bonded labor. Following task force recommendations, the Federal Cabinet approved a National Policy and Action Plan to Combat Child Labor. This action plan targets children in the age group five to 14, who are economically active and part of the labor force, and who generally are not in school.

Pakistan's National Action Plan for the elimination of child labor focuses on the following components: awareness raising; withdrawal of child engaged in the worst

forms of child labor; community mobilization; situational analysis and development of a database on child labor; law enforcement; capacity building of relevant ministries/departments; enhancing education and skills training opportunities for children; empowerment of poor families, and promoting coordination with functional and social partners (*National Policy and Action Plan to Combat Child Labor*, p. 11).

Members of the international community such as the ILO have also been involved on the child labor issue in Pakistan. In 1994, the Government of Pakistan signed a Memorandum of Understanding with the ILO that allowed ILO/IPEC to launch child labor eradication activities in collaboration with several government ministries, NGOs, employers, trade unions and a National Steering Committee. IPEC child labor programs, including USDOL-funded projects (see Appendix C), can be found throughout the country and cover multiple sectors including soccer ball manufacturing, domestic work, leather tanning, automobile work, and occupations in the informal sector. The ILO is in the process of designating Timebound status to Pakistan. A Timebound program is a set of integrated approaches and policies to prevent and eliminate a country's worst forms of child labor within a defined period of time. These programs place emphasis on social mobilization, and economic and social policies to combat poverty and promote universal basic education.

Although no single intervention can eradicate child labor, one critical component of a comprehensive strategy is to make education accessible to working children as is emphasized in Pakistan's National Plan to Combat Child Labor. Unfortunately, the education system in Pakistan is in a poor state with current indicators for literacy, enrollment, and retention rates far below those found in much of the developing world. A survey of Pakistan's education system conducted by the Social Policy and Development Center reported the following alarming statistics (Social Policy and Development Center, *Social Development in Pakistan, Annual Report*, Karachi, 1999 as cited in SPARC, *The State of Pakistan's Children*, 1999, Islamabad, January 2000, pp. 31–38). The nation's literacy rate is 45 percent, with a 50 percent literacy rate for males and 24 percent for females. Currently, Pakistan accounts for nearly 27 percent of the dropout rate in South Asia and it is estimated that by the year 2005, Pakistan will account for nearly 40 percent of the dropout rate in the entire region. Furthermore, 37 percent of boys and 55 percent of girls of primary age are not in school. More seriously, 70 percent of students drop out in the first five years of school. Dropping out of school makes them prime candidates to enter the labor market, which they often do. Overall, the average number of years of schooling in Pakistan is 1.9, compared to 3.9 years in developing countries. In Punjab the mean number of years of schooling is 2.3 (3.4 years for boys, and 1.1 years for girls). The primary enrollment ratio in Punjab is 69.4 for males, and 58.1 for females.

Emerging Approaches To Address Barriers to Education in Pakistan

A number of potential solutions have emerged to address the challenge of the education sector in Pakistan including the emergence of private schools, public-private partnerships, community and religious schools. Through existing child labor projects, NGOs and employers have also developed models for non-formal and formal schools for children engaged in child labor. Among the models that are currently being used or may be further developed to address the education needs of working children or those at risk of dropping out of school and entering the labor force are the following:

Public-private partnerships (Adopt-a-School). Capacity building and the strengthening of education institutions are integral to the emergence of public-private partnerships. In Pakistan, members of the private sector have taken the responsibility of overseeing the daily operations of several government schools. This initiative has led to the active participation of the private sector in the Adopt-a-School program that is implemented mainly in the rural areas of the nation. The adoption of schools by the private sector has relieved pressure on the government by developing sustainable education options, building and repairing infrastructure, improving transparency and accountability as well as providing incentives, training and professional development for staff members. The proposed package of incentives for the private sector, particularly in rural areas and also urban slums include provisions of land free of cost and or at concessional rates. Private sector institutions, which are involved in educational partnerships, will also receive exemption of custom duties on import of educational equipment and exemption of 50 percent income tax for faculty, support and administrative staff. Government reports estimate that the private sector supplements 40 percent of the nation's education.

Community-based schools. Community-based schools have also been established by members of NGOs or Community Based Organizations. Many of the schools have been successful in raising the literacy rate in the northern rural areas of the country by establishing a community-based social and economic approach. This method includes improvement in physical infrastructure, adult education classes, and skills training. A majority of NGO-sponsored schools have concentrated their efforts on expanding the availability of universal primary education (UPE), which includes increasing access, quality, sustainability, research, and policy advocacy. Many of the community-based schools also implement and promote interventions in maternal and child health, nutrition, microcredit finance, and skills training.

Non-formal school programs. These programs have been implemented by NGOs or employers as part of an ILO or other donor child labor project. They often run on the premises of government schools at times when formal school is not in session, or they may also hold classes in separate locales. They vary in instructional quality, the level

of training provided to teachers and other incentives provided to children and families to promote school attendance. Some employer-sponsored schools such as in the carpet sector allow children to combine work with school. Employer sponsored schools include those of the SCCI (soccer ball production), Carpet Manufacturer's and Exporters Association, and Surgical Instruments Manufacturer Association of Pakistan.

Religious schools (madrassas). Madrassas are religious schools where a body of knowledge is passed down from teacher to student encouraging the memorization of religious text. While the curriculum in the school may be limited, its attraction is that students receive an education while being provided housing, food, and clothing. There are 8,000 madrassas registered with the government and some have tended to foster a conservative education that has sometimes resulted in religious extremism across parts of Pakistan and Afghanistan.

Private schools. The demand for private schools has increased in the last few years because of the quality of education they are able to provide. Students who attend private schools are usually from Pakistan's social elite. Most private schools are not supervised by any government agency and therefore free to establish their own curriculum, teaching methods and hiring practices. Education experts feel that involvement by the government would stifle the progress made by private schools and the institutions would lose their advantage of being able to provide quality education.

The development of these different approaches to improve school access and quality support Pakistan's Ministry of Education's education reform that has been in development since 1999. In November 2001, the Minister of Education announced the educational policies and reforms through which, for the first time in the history of Pakistan, the education budget would be increased by 150 percent. The bulk of the budget will be spent on literacy in formal and non-formal schools, technical and skills training, teacher training, development of school infrastructure and the establishment of public-private partnerships.

In January 2002, the Government of Pakistan Ministry of Education published *Education Sector Reforms. Action Plan 2002–2004* (Government of Pakistan, Ministry of Education, *Education Sector Reforms. Action Plan 2002–2004*, Jan. 2002, p. 75). As part of the strategy the government will make educational programs available for children above age 10 who are at risk of dropping out of school, involved in child labor or living in remote areas of the country. To address weak education indicators, the Government of Pakistan is giving priority to UPE and has recently passed a regulation making primary education compulsory. Content areas of the reform include literacy in formal and non-formal schools, technical and skills training, teacher training, development of school infrastructure and the establishment of public-private partnerships.

This plan specifically addresses the education needs of child laborers. Its strategies are similar to those of the Child

Labor Action Plan and include awareness-raising, development and dissemination of information, community mobilization, situation analysis, establishment of monitoring and evaluation system, withdrawal of children from exploitative labor on a priority basis, and special protection to the most vulnerable groups of child labor (*Education Sector Reforms. Action Plan 2002–2004*, Jan. 2002, p. 75).

As part of its educational reform plan, the Government of Pakistan has attached special importance to decentralization of the education sector. Through devolution of administrative authority, local government will undertake educational development. The devolution plan was launched in 2001 and actions are being developed to ensure that the process is successful.

As part of the decentralization and devolution process all provinces will become more active in education planning and implementation. Under Local Government Ordinance 2001, the province of Punjab has been assigned the responsibility of establishing Citizen Community Boards (CCBs). The function of the CCB is to ensure effective participation at the community level. The boards can form stakeholders associations such as Parent-Teacher Associations or Community Public Partnerships for community involvement in the improvement and maintenance of educational programs. Under this plan the local community will be involved in such issues as hiring of local teachers, involvement in the schools' annual development plan, and management and operation of school-related funds. The government ordinance also calls for the establishment of School Management or Monitoring Committees, which will ensure accountability and transparency at the district level.

The education reform plan also aims to encourage Pakistani expatriates to support the education sector in needy areas of Pakistan. Many overseas Pakistanis are economically prosperous and are a source of remittances that improve the social and economic conditions in their country of origin. Since the portfolio of the Ministry of Labor also includes Overseas Pakistanis, this approach could lead to interesting synergies between the Ministries of Education and Labor.

President Musharraf has also been instrumental in initiating educational reforms and poverty alleviation programs. This commitment to implement social change led to the creation of a Task Force on Human Development in June 2001. The task force is comprised of representatives from civil society, NGOs, academics, government, and field practitioners who are working to complete the reforms initiated by the government in various social sectors. The vision of the task force is to enable the people of Pakistan to reach their maximum potential by approaching development issues through a holistic approach. In January 2002, the Government of Pakistan and international donors including USDOL met at the Human Development Forum that included participation by President Musharraf and U.N. Secretary General Kofi Annan. At this

forum practitioners presented innovative approaches to education and human resource development in Pakistan including many of the models cited above.

Appendix E: Organizations Working on Education and Child Labor in Pakistan

A number of organizations work on education and child labor programs in Pakistan. If partnerships are envisioned, the Applicant should not limit consideration to what is listed below.

The Aga Khan Foundation

The Aga Khan Foundation is a private, non-denominational development agency. Its mission is to promote creative and effective solutions to problems that impact social development. As part of the government curriculum reform initiative, the Aga Khan Foundation has started a Teacher Resource Center, which is focused on early childhood education that works with public and government schools.

The Ali Institute of Education

The Ali Institute was established in 1992 with a grant from the UNDP to improve quality education. The Institute is currently involved in the Adopt-a-School program, and is working to raise educational standards through teacher training for underprivileged communities at nine Training and Resource Centers.

The Asia Foundation

The Asia Foundation is a private, nonprofit, nongovernmental organization dedicated to advancing the mutual interest of the United States and the Asia Pacific region and has been operating in Pakistan since 1954. Working in close partnerships with Pakistani NGOs and individuals, the Foundation has sought to develop sustainable models of community participation for a wide variety of services and contribute to an agenda for institutional reform and long-term good governance. The Foundation focuses on five key issues related to universal primary education: quality, access, sustainability, research and policy advocacy. In December 2000, the Asia Foundation co-sponsored a policy dialogue to present research findings and suggest policy initiatives on basic education. The Asia Foundation has also been instrumental in conducting comparative analysis of government, private and NGO schools to identify policy lessons.

International Labor Organization (ILO)

The ILO brings together governments, workers, and employers in a common endeavor to improve social protection and conditions of life and work throughout the world. The ILO, through the work done by the International Program to Eliminate Child Labor (IPEC), has implemented a large number of programs and activities aimed at combating child labor by creating awareness, promoting education and integrating social and economic development policies.

Save the Children-UK

Save the Children-UK is the leading charity in the United Kingdom working to create a

better world for children. Save the Children works in over 70 countries helping the children in the most impoverished communities. In Pakistan, Save the Children is involved in alternative education projects such as night schools for working children and credit and savings programs for the parents of working children. It has been the lead agency in combating child labor in the carpet industry in the Tharparkar district of southern Pakistan.

Skill Development Council of Punjab

The Council was established in June 1995 because of the lack of highly trained employees needed to run technical and skilled manpower projects. One of its first initiatives was to create advocacy groups that would lobby organizations to provide funds to support basic skills training. The Council is a tripartite organization with employers taking the lead and members of the government and council taking active roles. Currently, the Council supports 30 Non-Formal Education (NFE) and Skill Training Centers. The Skill Training Centers allow older youth to be better equipped and have the knowledge necessary to find employment in more technically advanced labor sectors. Members of the Council are also active in conducting seminars and raising awareness on the child labor situation in Pakistan.

Society for the Protection of the Rights of the Child (SPARC)

SPARC is a Pakistani NGO working for the rights of the child and for the worldwide promotion of human rights. SPARC is instrumental in raising public awareness and producing research on child laborers in Pakistan through books, newsletters, brochures, and reports.

SUDHARR

SUDHARR is a Pakistani NGO that established NFE programs in 1995. Since then the organization has had great success mainstreaming urban children into formal school settings. SUDHARR cites grassroots mobilization as its foundation for success using the concept of Family Education and Village Education Committees. Through its approach, the school becomes the center of community life. Current programs also focus on training and motivating teachers and district school administrators.

Technical Training Institute-Lahore

The Technical Training Institute is focused on improving training for those in the industrial sector. The institute has two areas of focus, which include technical training and apprenticeship training. Students interested in pursuing careers as electricians or other science/math-based careers must have matriculated before being accepted into the institute. Currently there are 11,000 students in the full-time training program (two years) and nearly 3,000 in the apprenticeship program a three-year program. The institute has initiated short courses, which are between six months to one year. Recent additions to the curriculum include graphic/fine arts, medical assistant and computer training.

UNESCO

UNESCO action in education strategy is shaped by three objectives which include promoting education as a fundamental human right; improving the quality of education for all children; and promoting experimentation, innovation and the diffusion and sharing of information and best practices as well as policy dialogue in education. The Government of Pakistan has responded favorably to UNESCO's Education For All commitment. Current UNESCO projects in Pakistan focus on street and working children as well as children working in the carpet industry in Lahore. UNESCO has also undertaken a teacher-training program that incorporates using the resources and infrastructure of national and regional teacher training colleges and has also been involved in the development and improvement of student assessment tools.

UNICEF

UNICEF operates in over 161 countries, areas and territories on solutions to problems facing children and their families and on ways to realize their rights. Work is carried out in partnership with governments, civil society organizations and communities to offer children the best possible start in life. Programs focus on policies, legislation and programmatic support to protect children in vulnerable situations. Their work reaches out to those who have been traditionally forgotten, including child laborers. In the last three years, UNICEF has worked with the Department of Education, Government of the Punjab to implement the Universal Primary Education Project. This project has worked in several districts and has fully involved communities and teachers in combating child labor and increasing enrollment. The project's major objectives have been: (1) To enroll every child in the age group of five to seven years and retain them for the entire primary cycle; (2) to provide quality education, and (3) to bring attitudinal change among communities to make them supportive of UPE. In Pakistan, UNICEF is interested in vocational skills training for older youth involved in work.

Appendix F: List of Background Materials Available Upon Request

The following additional background materials are available from USDOL upon request.

Government of Pakistan. *Education Sector Reforms: Action Plan 2001-2004*.

Government of Pakistan. *National Policy and Action Plan to Combat Child Labor*.

[FR Doc. 02-12961 Filed 5-22-02; 8:45 am]

BILLING CODE 4510-28-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. NRTL1-88]

MET Laboratories, Inc., Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of MET Laboratories, Inc., for renewal of its recognition as a Nationally Recognized Testing Laboratory, under 29 CFR 1910.7, and the related application of MET Laboratories, Inc., for expansion of its recognition to include additional test standards.

EFFECTIVE DATE: The renewal is effective on May 23, 2002 and will be valid until May 23, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7. The renewal incorporates the expansion.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet or Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:**Notice of Final Decision**

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal and expansion of recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion covers the use of two additional test standards. The NRTL's scope of recognition may be found in the following OSHA informational web page: <http://www.osha-slc.gov/dts/otpca/nrtl/met.html>. The information on this page will be updated in the very near future to include the recognitions granted in this notice.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in §1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use

products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our web site at <http://www.osha-slc.gov/dts/otpca/nrtl/index.html>.

MET Laboratories, formerly known as MET Electrical Testing Company, applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in April 1988. On May 16, 1989 (54 FR 21136), it received this initial recognition. MET applied for its first renewal in August 1993, which OSHA announced, along with other MET applications on August 6, 1996 (61 FR 41661) and granted on November 20, 1996 (61 FR 59114). The Agency granted MET's renewal for a period of five years ending on November 20, 2001.

Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. MET submitted a request, dated February 9, 2001 (see Exhibit 28), to renew its recognition within the time allotted, and MET retains its recognition pending OSHA's final decision in this renewal process. MET's existing scope of recognition consists of the facility already recognized and the supplemental programs, as listed below, and the test standards listed under *Renewal of Recognition* below.

MET also submitted a request, dated February 13, 2002 (see Exhibits 28-1), to expand its recognition to include the two additional test standards listed below. The OSHA NRTL Program staff determined that the two test standards, listed below under *Expansion of Recognition*, are appropriate within the meaning of 29 CFR 1910.7(c) and can be included in MET's scope of recognition. The staff makes such determinations in processing applications from any NRTL.

In processing MET's renewal request, OSHA NRTL Program staff performed an on-site review of MET's facility on October 1 and 3, 2001. In the on-site review report (see Exhibit 29), the staff recommended a "positive finding," which means a positive recommendation to the Assistant Secretary regarding the renewal. In processing MET's expansion request to include the additional standards, OSHA NRTL Program staff did not perform an on-site review but reviewed documentation pertinent to the request and in a memo (see Exhibit 29-1) recommended the expansion of MET's recognition to include the additional test standards listed below.

OSHA published the required notice in the **Federal Register** on April 11, 2002 (67 FR 17722), to announce MET's renewal and expansion requests. This notice included a preliminary finding that MET could meet the requirements in 29 CFR 1910.7 for renewal and expansion of its recognition and invited public comment by April 26, 2002. OSHA received no comments concerning this notice.

The previous notice published by OSHA for MET's recognition covered an expansion of recognition to include additional standards, which became effective on September 26, 2001 (66 FR 49211). The other **Federal Register** notices related to MET's recognition that OSHA has published since MET's previous renewal addressed an expansion for additional standards, which OSHA announced on November 10, 1998 (63 FR 63085) and granted on March 9, 1999 (64 FR 11502). The renewal incorporates all of these recognitions granted to MET, including the expansion being granted in this notice.

You may obtain or review copies of all public documents pertaining to the MET applications by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL1-88, the permanent record of public information on the MET recognition.

The current address of the MET facility (site) already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Programs and Procedures

The renewal of recognition includes MET's continued use of the following supplemental programs and procedures based upon the criteria detailed in the March 9, 1995 **Federal Register** notice

(60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized MET for these programs. See <http://www.osha-slc.gov/dts/otpca/nrtl/met.html>.

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's report and memo, and other pertinent information. Based upon this examination and the assessor's recommendations, OSHA finds that MET Laboratories, Inc., has met the requirements of 29 CFR 1910.7 for renewal and expansion of its NRTL recognition. The renewal and expansion apply to the site listed above. In addition, the renewal and expansion cover the test standards listed below and are subject to the limitations and

conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews and expands the recognition of MET, subject to these limitations and conditions.

Limitations

Renewal of Recognition

OSHA limits the renewal of recognition of MET to the site listed above. OSHA further limits the renewal of recognition of MET to testing and certification of products for demonstration of conformance to the following 102 test standards, which OSHA has previously recognized for MET. Except as explained below (see paragraph immediately following listing of standards), all these standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI C12.1 Code for Electricity Meters
ANSI/IEEE C57.13 Terminology and

Test Code for Instrument

Transformers

ANSI/UL 5 Surface Metal Raceways
and Fittings

ANSI/UL 22 Electric Amusement
Machines

UL 45 Portable Electric Tools

ANSI/UL 50 Enclosures for Electrical
Equipment

ANSI/UL 65 Electric Wired Cabinets

ANSI/UL 73 Electric Motor-Operated

Appliances

ANSI/UL 122 Electric Photographic
Equipment

ANSI/UL 130 Electric Heating Pads

ANSI/UL 153 Portable Electric Lamps

ANSI/UL 187 X-Ray Equipment

ANSI/UL 197 Commercial Electric

Cooking Appliances

ANSI/UL 201 Garage Equipment

ANSI/UL 231 Electrical Power Outlets
UL 416 Refrigerated Medical

Equipment

ANSI/UL 469 Musical Instruments and
Accessories

ANSI/UL 471 Commercial

Refrigerators and Freezers

ANSI/UL 482 Portable Sun/Heat

Lamps

ANSI/UL 484 Room Air Conditioners

ANSI/UL 499 Electric Heating

Appliances

UL 506 Specialty Transformers

ANSI/UL 507 Electric Fans

ANSI/UL 508 Electric Industrial

Control Equipment

ANSI/UL 514A Metallic Outlet Boxes,
Electrical

UL 544 Electric Medical and Dental
Equipment

UL 664 Commercial Dry-Cleaning
Machines (Type IV)

ANSI/UL 676 Underwater Lighting
Fixtures

ANSI/UL 698 Industrial Control
Equipment for Use in Hazardous
(Classified) Locations

ANSI/UL 705 Power Ventilators
 UL 745-1 Portable Electric Tools
 UL 745-2-1 Particular Requirements of Drills
 UL 745-2-2 Particular Requirements for Screwdrivers and Impact Wrenches
 UL 745-2-3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
 UL 745-2-4 Particular Requirements for Sanders
 UL 745-2-5 Particular Requirements for Circular Saws and Circular Knives
 UL 745-2-6 Particular Requirements for Hammers
 UL 745-2-8 Particular Requirements for Shears and Nibblers
 UL 745-2-9 Particular Requirements for Tappers
 UL 745-2-11 Particular Requirements for Reciprocating Saws
 UL 745-2-12 Particular Requirements for Concrete Vibrators
 UL 745-2-14 Particular Requirements for Planers ≤
 UL 745-2-17 Particular Requirements for Routers and Trimmers
 UL 745-2-30 Particular Requirements for Staplers
 UL 745-2-31 Particular Requirements for Diamond Core Drills
 UL 745-2-32 Particular Requirements for Magnetic Drill Presses
 UL 745-2-33 Particular Requirements for Portable Bandsaws
 UL 745-2-34 Particular Requirements for Strapping Tools
 UL 745-2-35 Particular Requirements for Drain Cleaners
 UL 745-2-36 Particular Requirements for Hand Motor Tools
 UL 745-2-37 Particular Requirements for Plate Jointers
 ANSI/UL 751 Vending Machines
 UL 763 Motor-Operated Commercial Food Preparing Machines
 UL 775 Graphic Arts Equipment
 ANSI/UL 813 Commercial Audio Equipment
 ANSI/UL 859 Personal Grooming Appliances
 UL 869A Standard for Service Equipment
 ANSI/UL 886 ** Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
 ANSI/UL 913 Intrinsically Safe Apparatus and Associated apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations
 ANSI/UL 923 Microwave Cooking Appliances
 UL 935 Fluorescent-Lamp Ballasts

ANSI/UL 982 Motor-Operated Household Food Preparing Machines
 ANSI/UL 1012 Power Supplies
 ANSI/UL 1017 Vacuum Cleaning Machines and Blower Cleaners
 ANSI/UL 1018 Electric Aquarium Equipment
 UL 1026 Electric Household Cooking and Food Serving Appliances
 UL 1028 Hair Clipping and Shaving Appliances
 ANSI/UL 1042 Electric Baseboard Heating Equipment
 ANSI/UL 1054 Special-Use Switches
 ANSI/UL 1069 Hospital Signaling and Nurse-Call System
 UL 1083 Household Electric Skillets and Frying-Type Appliances
 ANSI/UL 1203* Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
 UL 1236 Battery Chargers for Charging Engine-Starter Batteries
 UL 1244 Electrical and Electronic Measuring and Testing Equipment
 UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
 ANSI/UL 1262 Laboratory Equipment
 ANSI/UL 1270 Radio Receivers, Audio Systems, and Accessories
 ANSI/UL 1310 Direct Plug-In Transformer Units
 ANSI/UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
 ANSI/UL 1410 Television Receivers and High-Voltage Video Products
 ANSI/UL 1411 Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
 UL 1431 Personal Hygiene and Health Care Appliances
 UL 1449 Transient Voltage Surge Suppressors
 UL 1459 Telephone Equipment
 UL 1492 Audio-Video Products and Accessories
 ANSI/UL 1570 Fluorescent Lighting Fixtures
 ANSI/UL 1571 Incandescent Lighting Fixtures
 UL 1598 Luminaries
 ANSI/UL 1573 Stage and Studio Lighting Units
 UL 1585 Class 2 and Class 3 Transformers
 UL 1604 Electrical Equipment for Use In Class I and II, Division 2, and Class III Hazardous (Classified) Locations
 ANSI/UL 1638 Visual Signaling Appliances—Private Mode Emergency and General Utility Signaling
 ANSI/UL 1647 Motor-Operated Massage and Exercise Machines
 UL 1778 Uninterruptible Power Supply Equipment

UL 1786 Nightlights
 UL 1950 Safety of Information Technology Equipment, Including Electrical Business Equipment
 UL 1993 Self-Ballasted Lamps and Lamp Adapters
 UL 1995 Heating and Cooling Equipment
 UL 2601-1 Medical Electrical Equipment, Part 1: General Requirements for Safety
 UL 3101-1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
 UL 3111 Electrical Measuring and Test Equipment; Part 1: General Requirements
 UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

Note: Testing and certification of gas operated equipment is limited to Class I to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas")

At the time of preparation of the preliminary notice, some of the test standards for which OSHA currently recognizes MET, and which are listed above, have been withdrawn or replaced by the standards developing organization. Under OSHA policy regarding such withdrawn or replaced test standards, OSHA can no longer recognize the NRTL for the test standards, but the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar types of product testing. However, a number of other NRTLs also are recognized for these withdrawn or replaced standards. As a result, OSHA will publish a separate notice to make the appropriate substitutions for MET and the other NRTLs that were recognized for these standards.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the test standards listed above, and listed later in this notice, are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (e.g., UL 1012) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1012). Under

* Testing and certification of products under this test standard is limited to Class I locations. Explosion testing is also limited to current test chamber capabilities.

our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (<http://www.ansi.org>) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

Expansion of Recognition

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following two test standards, and, as indicated above, OSHA has determined the standards are "appropriate."

UL 924 Emergency Lighting and Power Equipment

UL 1008 Transfer Switch

Conditions

MET Laboratories, Inc., must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the MET facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

MET will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and MET will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 14th day of May, 2002.

John L. Henshaw,
Assistant Secretary.

[FR Doc. 02-12957 Filed 5-22-02; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-02-1]

American Boiler and Chimney Co. and Oak Park Chimney Corp.; Application for Permanent Variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of an application for a permanent variance; request for comment.

SUMMARY: The American Boiler and Chimney Co. and Oak Park Chimney Corp. are applying for a permanent variance from the Occupational Safety and Health Administration (i.e., "OSHA" or "the Agency") provision that regulates the tackle used for boatswain's chairs (§ 1926.452 (o)(3)), as well as the requirements specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. The variance application covers the use of boatswain's chairs in chimney construction work.

DATES: Submit written comments and requests for a hearing by June 24, 2002.

ADDRESSES: Submit comments in quadruplicate, or one hard copy and one diskette (3-1/2 inches) in a Word, WordPerfect, or ASCII format, to: Docket Office, Docket No. S-778-A, Room N-2634, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350. Submit any information not contained on a disk (e.g., studies, articles) in quadruplicate to the Docket Office. Commenters may transmit written comments of 10 pages or less by fax to (202) 693-1698, provided they send an original and three copies of these comments to the Docket Office by the submission date.

Send requests for a hearing to Ms. Veneta Chatmon, Office of Information and Consumer Affairs, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

FOR FURTHER INFORMATION: For general information and press inquiries, contact Ms. Bonnie Friedman, Office of Information and Consumer Affairs,

Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. Make technical inquiries to Mr. Mike Turner, Acting Director, Office of Technical Programs and Coordination Activities, Room N-3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2110; fax (202) 693-1644. You can obtain additional copies of this **Federal Register** notice from the Office of Publications, Room N-3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693-1888. For electronic copies of this notice contact OSHA on the Internet at <http://www.osha.gov>, and select "Federal Register," "Date of Publication," and then "2002."

Information about this variance application is also available from the following OSHA Regional Offices:

U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203, Telephone: (617) 565-9860, Fax: (617) 565-9827.

U.S. Department of Labor, OSHA, 201 Varick St., Room 670, New York, NY 10014, Telephone: (212) 337-2378, Fax: (212) 337-2371.

U.S. Department of Labor, OSHA, The Curtis Center, Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106, Telephone: (215) 861-4900, Fax: (215) 861-4904.

U.S. Department of Labor, OSHA, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303, Telephone: (404) 562-2300, Fax: (404) 562-2295.

U.S. Department of Labor, OSHA, 230 South Dearborn St., Room 3244, Chicago, IL 60604, Telephone: (312) 353-2220, Fax: (312) 353-7774.

U.S. Department of Labor, OSHA, 525 Griffin St., Room 602, Dallas, TX 75202, Telephone: (214) 767-4731, Fax: (214) 767-4137.

U.S. Department of Labor, OSHA, City Center Square, 1100 Main St., Suite 800, Kansas City, MO 64105, Telephone: (816) 426-5861, Fax: (816) 426-2750.

U.S. Department of Labor, OSHA, 1999 Broadway, Suite 1690, Denver, CO 80201, Telephone: (303) 844-1600, Fax: (303) 844-1616.

U.S. Department of Labor, OSHA, 71 Stevenson St., Room 420, San Francisco, CA 94105, Telephone: (415) 975-4310, Fax: (415) 975-4319.

U.S. Department of Labor, OSHA, 1111 Third Ave., Suite 715, Seattle, WA 98101, Telephone: (206) 553-5930, Fax: (206) 553-6499.

Notice of Application

The following companies (i.e., "applicants") submitted requests for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11: American Boiler and Chimney Co., 3401 Grand Ave., Neville Island, Pennsylvania; and Oak Park Chimney Corp., 1800 Des Plaines Ave., Forest Park, Illinois 60130. The applicants seek a permanent variance from § 1926.452(o)(3), which provides the tackle requirements for boatswain's chairs. The applicants also request a variance from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. These latter paragraphs specify the following requirements:

- (c)(1)—Construction requirements for hoist towers outside a structure.
- (c)(2)—Construction requirements for hoist towers inside a structure.
- (c)(3)—Anchoring a hoist tower to a structure.
- (c)(4)—Hoistway doors or gates.
- (c)(8)—Electrically interlocking entrance doors or gates to the hoistway and cars.
- (c)(13)—Emergency stop switch located in the car.
- (c)(14)(i)—Using a minimum of two wire ropes for drum hoisting.
- (c)(16)—Material and component requirements for construction of personnel hoists.

The applicants contend that the permanent variance would provide their employees with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions.

The places of employment affected by this variance application are the present and future projects where the applicants construct chimneys, including States under Federal jurisdiction, as well as States having safety and health plans approved by OSHA under section 18 of the OSH Act (29 U.S.C. 667) and 29 CFR part 1952 ("Approved State Plans for Enforcement of State Standards") (i.e., "State-plan States"). The applicants certify that they have provided each current employee affected by the permanent variance, as well as employee representatives, with a copy of their variance requests, and also have posted a copy of these requests in a prominent location in their corporate offices and at each job site where they normally post notices. In addition, the applicants have informed employees and their representatives of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on this variance application.

Multi-State Variance

The applicants perform chimney work in a number of geographic locations in the United States; these locations are likely to include one or more locations in State-plan States. Consequently, OSHA would issue any permanent variance granted as a result of this variance application according to the requirements specified by § 1952.9 ("Variances affecting multi-state employers") and § 1905.14(b)(3) ("Action on applications"). Under these regulations, a permanent variance granted by the Agency would become effective in State-plan States to the extent that the pertinent State standards are the same as the Federal OSHA standards from which the applicants are seeking the permanent variance. This notice provides State-plan States with an opportunity to comment on this variance application.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The following Table of Contents identifies the major sections under "Supplementary Information." To understand fully the information presented in the following sections, we recommend reviewing the general and specific conditions of the permanent variance listed below under section III ("Conditions of the Application for a Permanent Variance").

- I. Table of Contents
- II. Background
 - A. Overview
 - B. Previous variances from §§ 1926.452(o)(3) and 1926.552(c)
 - C. Requested variance from § 1926.452(o)(3)
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- III. Conditions of the Application for a Permanent Variance
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II. Background

A. Overview

The applicants construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires applicants to transport employees and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it requires frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport employees to various heights inside and outside a chimney, the applicants propose to use a hoist system that would lift and lower personnel-transport devices that include personnel cages, personnel platforms, or boatswain's chairs. The applicants would also attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney. Applicants would use personnel cages, personnel platforms, or boatswain's chairs solely to transport employees with the tools and materials necessary to do their work, and not to transport only materials or tools in the absence of employees.

The applicants would use a hoist engine located and controlled outside the chimney, to power the hoist system. The system would also consist of a wire rope that: Spools off the hoist drum into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to the personnel or material transport. The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The applicants would use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

The applicants would implement additional conditions to improve employee safety, including:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;
- Ensure that material hoisting does not endanger employees by providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of § 1926.552(c), including canopies and shields to protect employees located at the bottom of the chimney from material that may fall during hoisting and other overhead activities;
- Providing falling-object protection for scaffold platforms as specified by § 1926.451(h)(1);

- Conducting tests and inspections of the hoist system as required by §§ 1926.20(b)(2) and 1926.552(c)(15);

- Establishing an accident-prevention program that conforms to § 1926.20(b)(3);

- Ensuring that employees who use a personnel platform or boatswain's chair wear full body harnesses and lanyard; and

- Securing the lifelines (used with a personnel platform or boatswain's chair) to the rigging at the top, and to a weight at the bottom, of the chimney to provide maximum stability to the lifelines.

B. Previous Variances From

§§ 1926.452(o)(3) and 1926.552(c)

Since 1973, ten chimney-construction companies have demonstrated to OSHA that several of the hoist-tower requirements of § 1926.552(c) present access problems that pose a serious danger to their employees. These companies received permanent variances from these hoist-tower requirements, and they have effectively used the same alternate apparatus and procedures that the applicants are now proposing to use in this variance application. The Agency published the permanent variances for the ten companies at 38 FR 8545 (April 3, 1973), 50 FR 40627 (October 4, 1985), and 52 FR 22552 (June 12, 1987). Five of these permanent variances are still in effect; the remaining five variances are not in effect because the companies are no longer in business.

In deciding whether or not to grant the earlier permanent variances from the hoist-tower requirements of § 1926.552(c), OSHA asked the chimney-construction industry to conduct tests to determine the effectiveness of the new equipment, procedures, and training proposed in the applications. The Agency also evaluated these alternatives by observing them at various chimney-construction sites. In doing so, OSHA found that the alternatives were generally safe industry practices. If the Agency identified alternatives that did not adequately protect employees, it revised the conditions of the variance applications to require additional safeguards to address these discrepancies. On the basis of this experience and knowledge, OSHA finds that the applicants' requests for a permanent variance are consistent with the permanent variances that the Agency has granted previously to other employers in the chimney-construction industry. Therefore, the Agency believes that the conditions specified in these variance applications will provide the employees of the applicants with at

least the same level of safety that they would receive from § 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552.

C. Requested Variance From § 1926.452(o)(3)

The applicants state that it is necessary, on occasion, to use a boatswain's chair to transport employees to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of § 1926.452, which regulates the tackle used to rig a boatswain's chair, states that this tackle must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8") inch diameter first-grade manila rope (or equivalent rope)."

The primary purpose of this paragraph is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswain's chair. However, the applicants note that the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall because of space limitations. Therefore, as an alternative to complying with the tackle requirements specified by § 1926.452(o)(3), the applicants propose to use the hoisting system described in paragraph I.A ("Overview") of this notice, both inside and outside a chimney, to raise or lower employees in a personnel cage to work locations. The applicants would use a personnel cage for this purpose to the extent that adequate space is available; they would use a personnel platform if using a personnel cage is infeasible because of limited space. If available space makes using a personnel platform infeasible, the applicants would use a boatswain's chair to lift employees to work locations. The applicants would limit use of the boatswain's chair to elevations above the last work location that the personnel cage and personnel platform can reach; under these conditions, they would attach the boatswain's chair directly to the hoisting cable only if the structural arrangement precludes the safe use of the block and tackle required by § 1926.452(o)(3).

D. Requested Variance From § 1926.552(c)

Paragraph (c) of § 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel

from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting personnel to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes employees to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of § 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The applicants assert that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes employees to a serious fall hazard. Additionally, the applicants note that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the employees involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of § 1926.552 requires that employers enclose all four sides of a hoist tower even if the tower is located inside a chimney; the enclosure must extend the full height of the tower. The applicants contend that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys, or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (e.g., tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of § 1926.552(c)(1) and (c)(2), the applicants propose to use the rope-guided hoist system proposed above in

section II.A ("Overview") of this application to transport employees to and from work locations inside and outside chimneys. Use of the proposed hoist system would eliminate the need for the applicants to comply with other provisions of § 1926.552(c) that specify requirements for hoist towers.

Therefore, they are requesting a permanent variance from several other closely-related provisions, as follows:

- (c)(3)—Anchoring the hoist tower to a structure.
- (c)(4)—Hoistway doors or gates.
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement if the doors or gates are open.
- (c)(13)—Emergency stop switch located in the car.
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting.
- (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The applicants assert that the proposed hoisting system would protect their employees at least as effectively as the hoist-tower requirements of § 1926.552(c). The following section of this application describes the general and specific conditions that would apply to the proposed hoisting system.

III. Conditions of the Application for a Permanent Variance

A. General Conditions

During chimney construction, the applicants propose to use a rope-guided hoist system to safely transport their employees between the bottom landing of a chimney and the elevated work location instead of complying with § 1926.552(c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (c)(16). The hoist system includes the hoist machine, personnel- or material-transport device, safety cables, and additional safety measures (e.g., limit switches to prevent overrun of a personnel- or material-transport device at the top and bottom landings, and safety clamps that grip the safety cables if the main hoist line fails).

The applicants propose to use the hoist system inside and outside a chimney to raise or lower employees in a personnel cage to work locations. If available space makes using a personnel cage for this purpose infeasible, the applicants would use a personnel platform or a boatswain's chair. The applicants would limit use of the boatswain's chair to elevations above the last work location that the personnel cage and personnel platform can reach; under these conditions, they would

attach the boatswain's chair directly to the hoisting cable only if the spatial arrangement makes safe use of the block and tackle required by § 1926.452(o)(3) infeasible. For the purpose of enforcing the variance, the applicants would assume the burden of demonstrating infeasibility if they use either a personnel platform or a boatswain's chair to transport employees to a work location, or substitute the hoisting cable for the required block and tackle in lifting the boatswain's chair.

Except for the provisions identified above in this section (i.e., "General conditions"), the applicants acknowledge that they would comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926 if OSHA grants their variance applications. Moreover, the applicants would comply fully with the specific conditions listed in the following section (i.e., "Specific conditions").

B. Specific Conditions

The applicants propose to implement the following specific conditions as an alternative to tackle requirements provided for boatswain's chairs by § 1926.452(o)(3), and to the personnel-hoist requirements of paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552:

1. Qualified Competent Person

The applicants would:

(a) Provide a qualified competent person, as specified in paragraphs (f) and (m) of § 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system complies with the conditions of this proposed alternative and to the appropriate requirements of 29 CFR part 1926 ("Safety and Health Regulations for Construction").

(b) Whenever the hoist system is raising or lowering employees, ensure that the qualified competent person is present at ground level to assist in an emergency.

2. Hoist Machine

(a) Type of hoist. The applicants would designate the hoist machine as a portable personnel hoist.

(b) Raising or lowering a transport. The applicants would ensure that the hoist machine includes a base-mounted drum hoist designed to control line speed, and that the hoist system does not use belt drives. Whenever they raise or lower a personnel or material hoist (e.g., a personnel cage, personnel platform, boatswain's chair, hopper, concrete bucket) using the hoist system, the applicants would:

(i) Continuously engage the drive components if they are lowering an empty or occupied transport (i.e., no "freewheeling").

(ii) Interconnect, on a continuous basis, the drive system through a torque converter or mechanical (or equivalent) coupling.

(iii) If using a forward-reverse coupling or shifting transmission, ensure that the braking mechanism applies automatically when the transmission is in the neutral position.

(c) Source of power. The applicants would have the option to power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) Constant pressure control switch. The applicants would:

(i) Equip the hoist machine with a hand-or foot-operated constant-pressure control switch (i.e., a "deadman control switch") that would stop the hoist immediately upon release.

(ii) Protect the control switch to prevent it from activating if it is struck by a falling or moving object.

(e) Line-speed indicator. The applicants would equip the hoist machine with a line-speed indicator maintained in good working order, and that is in clear view of the hoist operator during hoisting operations.

(f) Braking systems. The applicants would equip the hoist machine with two (2) independent braking systems (i.e., one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) Slack-rope switch. The applicants would equip the hoist machine with a slack-rope switch to prevent rotation of the hoist drum under slack-rope conditions.

(h) Frame. The applicants would ensure that the frame of the hoist machine is a self-supporting, rigid, welded steel structure, with holding brackets for anchor lines and legs for anchor bolts being integral components of the frame.

(i) Stability. The applicants would secure hoist machines in position to prevent movement shifting or dislodgement.

(j) Location. The applicants would locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum. In this regard, the applicants would ensure that the fleet angle remains between one-half degree ($1/2^\circ$) and one and one-half degrees ($1-1/2^\circ$) for smooth drums, and between one-half degree ($1/2^\circ$) and two degrees

(2°) for grooved drums, with the lead sheave centered on the drum.¹

(k) Drum and flange diameter. The applicants would provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting, with a flange diameter that is at least one and one-half (1-1/2) times the rope-drum diameter.

(l) Spooling of the rope. The applicants would never spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the hoist-drum flange.

(m) Electrical system. The applicants would ensure that all electrical equipment is weatherproof.

(n) Limit switches. The applicants would equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswain's chair, or material-transport device at the top of the supporting structure, and at the bottom of the hoistway or lowest landing level.

3. Methods of Operation

(a) Operator. The applicants would ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine.

(b) Speed limitations. The applicants would not operate the hoist at a speed in excess of:

(i) One hundred (100) feet (30.5 m) per minute if they use a personnel platform or boatswain's chair to transport employees.

(ii) Two hundred and fifty (250) feet (76.9 m) per minute if they are using a personnel cage to transport employees.

(iii) If they are hoisting only material, a line speed that is consistent with the design limitations of the system.

(c) Communication. The applicants would:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and employees located in or on moving personnel cages, personnel platforms, and boatswain's chairs.

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively. Hoisting would resume only when the an applicant's site superintendent determines that it is safe to do so.

4. Hoist Rope

(a) Grade. The applicants would use a wire rope for the hoist system (i.e., "hoist rope") that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) Safety factor. The applicants would maintain a safety factor of at least eight (8) throughout the entire length of hoist rope.

(c) Size. The applicants would use a hoist rope that is at least one-half (1/2) inch (1.3 cm) in diameter.

(d) Installation, removal, and replacement. The applicants would also:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup.

(ii) Remove and replace the wire rope with new wire rope if any of the conditions specified by § 1926.552(a)(3) occurs.

(e) Attachments. The applicants would attach the rope to a personnel cage, personnel platform, or boatswain's chair with a keyed-screwpin shackle or positive-locking link.

(f) Wire-rope fastenings. If the applicants use clip fastenings (e.g., U-bolt wire-rope clips) with wire ropes, they would:

(i) Use table H-20 of § 1926.251 to determine the number and spacing of clips.

(ii) Use at least three (3) drop-forged clips at each fastening.

(iii) Install the clips with the "U" of the clips on the dead end of rope.

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

5. Footblocks

(a) Type of block. The applicants would use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings.

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting.

(iii) Designed with a guard that contains the wire rope within the sheave groove.

(iv) Bolted rigidly to the base.

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical as required by the direction of rope travel.

(b) Directional change. The applicants would ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is about 90°.

(c) Diameter. The applicants would ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope. To ensure this diameter-to-diameter ratio, the applicants would inspect the hoist rope regularly, and immediately discard the rope if they find evidence of any condition specified by § 1926.552(a)(3).

6. Cathead and Sheaves

(a) Qualified competent person. The applicants would use a qualified competent person to design and maintain the cathead (i.e., "overhead support").

(b) Support. The applicants would use a cathead that consists of a wide-flange beam or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(c) Installation. The applicants would ensure that all sheaves revolve on shafts that rotate on bearings, and they would mount the bearings securely to maintain the proper bearing position at all times.

(d) Sheave safeguards. The applicants would provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves if the rope vibrates or swings abnormally.

(e) Diameter. The applicants would use a cathead sheave with a diameter that is at least 24 times the diameter of the wire rope. To ensure this diameter-to-diameter ratio, the applicants would inspect the rope regularly, and immediately discard the rope if they find evidence of any condition specified by § 1926.552(a)(3).

7. Guide ropes

(a) Number of cables. The applicants would affix two (2) guide ropes by swivels to the cathead. The guide ropes would:

(i) Consist of steel safety cables not less than one-half (1/2) inch (1.3 cm) in diameter.

(ii) Be free of damage or defect at all times.

(b) Cable fastening and alignment tension. The applicants would fasten one end of each cable securely to the overhead support, with appropriate tension applied at the foundation.

(c) Safety clamps. The applicants would fit appropriately designed and constructed safety clamps to the guide ropes.

(d) Application of tension. The applicants would never use safety clamps that damage the ropes.

(e) Height. The applicants would rig the guide ropes along the entire height of the hoist-machine structure.

¹ This proposal adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks*, H. I. Shapiro, et al. (eds.); New York McGraw-Hill. Accordingly, the fleet angle is "[t]he angle the rope leading onto a rope drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange."

8. Personnel Cage

(a) Construction. The applicants would use a personnel cage that:

(i) Is of steel-frame construction, and permanently enclosed on the top and sides (except for the entrance and exit).

(ii) Has a floor securely fastened in place. The floor would have a loading factor that is four (4) times its maximum rated load capacity.

(iii) Has walls that consist of 14-gauge, one-half (1/2) inch (1.3 cm) expanded metal mesh, or an equivalent material. The walls would cover the full height of the personnel cage between the floor and the overhead covering.

(iv) Has a sloped roof constructed of one-eighth (1/8) inch (0.3 cm) aluminum, or an equivalent material.

(v) Has safe handholds (e.g., rope grips—but not rails or hard protrusions—that accommodate each occupant).

(b) Overhead weight. The applicants would provide a personnel cage that has:

(i) An overhead weight (e.g., a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and footblock. This weight would be capable of preventing line run.

(ii) A means to restrain the movement of the overhead weight so that it does not interfere with safe personnel hoisting.

(c) Types of gates. The applicants would provide gates that guard the full height of the entrance openings and have a functioning mechanical lock that prevents accidental gate opening.

(d) Operating procedures. The applicants would post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) Capacity. The applicants would hoist no more than four (4) people in the cage, and the rated load capacity of the cage would be at least 250 pounds (113.4 kg) for each person so hoisted (e.g., the rated load capacity would be at least 500 pounds (227.3 kg) for two people or 1000 pounds (454.5 kg) for four people).

(f) Employee notification. The applicants would post a sign in each personnel cage notifying employees of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by paragraph (g) below.

(ii) The reduced rated load for the specific job.

(g) Static drop tests. The applicants would:

(i) Conduct static drop tests of each personnel cage that comply with the

definition of "static drop test" specified by section 3 ("Definitions") and the static drop test procedures provided in section 13 ("Inspections and Tests") of American National Standards Institute (ANSI) standard A10.22-1990 ("American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements").

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load.

(iii) Use only personnel cages for which no damage occurred to components as a result of the static drop tests.

9. Safety Clamps

(a) Attachment and operation. The applicants would attach safety clamps to each personnel cage for gripping the guide ropes. The safety clamps would:

(i) Operate on the "broken rope principle" defined in section 3 ("Definitions") of ANSI standard A10.22-1990.

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock.

(iii) For each hoist system, use a pre-determined and pre-set clamping force (i.e., the "spring compression force").

(b) Maintenance. The applicants would keep the safety-clamp assemblies clean and functional at all times.

10. Overhead Protection

To protect employees located at the base of the chimney (i.e., both inside and outside the chimney) from material and debris that may fall from above, the applicants would install a canopy or shield that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, and that slopes to the outside.²

11. Emergency-Escape Device

(a) Location. The applicants would provide an emergency-escape device, with operating instructions attached to it, in the personnel cage or at the bottom landing. If the device is:

(i) In the personnel cage, the applicants would ensure that it is long enough to reach the bottom landing from the highest possible escape point.

(ii) At the bottom landing, the applicants would provide a means in the personnel cage for the occupants to

raise the device to the highest possible escape point.

(b) Training. The applicants would instruct each employee who uses a personnel cage:

(i) On how to operate the emergency-escape device prior to the employee using a personnel cage for transportation.

(ii) Periodically, and as necessary, in the operation of the hoist system and the emergency-escape system.

12. Personnel Platforms and Boatswain's Chairs

(a) Personnel platform. The applicants would:

(i) Be permitted to attach the hoisting cable to a personnel platform under the conditions specified above by section III. A ("General conditions") of this application.

(ii) Ensure that an enclosure surrounds the platform that is at least 42 inches (106.7 cm) above the platform's floor.

(iii) Provide overhead protection if an overhead hazard is, or could be, present.

(iv) Comply with the applicable scaffolding strength requirements specified by § 1926.451(a)(1).

(b) Boatswain's chair. If using a boatswain's chair, the applicants would be permitted to substitute a hoisting cable for the block and falls required by § 1926.452(o)(3) under the conditions specified above by section III. A ("General conditions") of this application.

(c) Body harnesses and lifelines. Before employees use work platforms or boatswain's chairs, the applicants would equip employees with, and ensure that they use, fall-protection equipment as specified by § 1926.104 and the applicable requirements of § 1926.502(d).

13. Inspections, Tests, and Accident Prevention

The applicants would:

(a) Conduct inspections of the hoist system as required by § 1926.20(b)(2). These inspections would include a daily visual inspection of the system.

(b) Inspect and test the hoist system as specified by § 1926.552(c)(15).

(c) Comply with the accident-prevention requirements of § 1926.20(b)(3).

14. Welding

The applicants would use only qualified welders to weld components used in the hoisting system who are familiar with the weld grades, types, and materials specified in the design of

² Adapted from OSHA's Underground Construction Standard (§ 1926.800(t)(4)(iv)).

the system.³ The welders would perform such welding as specified by 29 CFR part 1926, subpart J ("Welding and Cutting").

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice under the authority specified by section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3-2000 (65 FR 50017), and 29 CFR part 1905.

Signed at Washington, DC on May 9, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Order Approving Transfer of License and Conforming Amendment

I

Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) is the holder of Facility Operating License No. DPR-28, which authorizes the operation of Vermont Yankee Nuclear Power Station (Vermont Yankee or the facility) at steady-state power levels not in excess of 1,593 megawatts thermal. The facility is located at the licensee's site in the Town of Vernon, Windham County, Vermont. The license authorizes VYNPC to possess, use, and operate the facility.

II

Under cover of a letter dated October 5, 2001, Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY), Entergy Nuclear Operations, Inc. (ENO), and VYNPC jointly submitted an application requesting approval of the transfer of Facility Operating License No. DPR-28 for Vermont Yankee from VYNPC to Entergy Nuclear VY and ENO. The licensee, Entergy Nuclear VY, and ENO also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by submittals dated November 7 and 8, 2001, and January 23 and April 30, 2002, collectively referred

to as the "application" herein unless otherwise indicated.

Entergy Nuclear VY, a Delaware limited liability company, is an indirect wholly owned subsidiary of Entergy Corporation and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. According to the application, Entergy Nuclear VY will assume title to the facility, while ENO will operate and maintain Vermont Yankee. The conforming license amendment would remove references to VYNPC from the license and add references to Entergy Nuclear VY and ENO, as appropriate, and make other administrative changes to reflect the proposed transfer.

VYNPC, Entergy Nuclear VY, and ENO requested approval of the transfer of the license and a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on December 7, 2001 (66 FR 63566). The Commission received no requests for hearing or written comments.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that Entergy Nuclear VY and ENO are qualified to be the holders of the license to the extent proposed in the application, and that the transfer of the license to Entergy Nuclear VY and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license

amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated May 17, 2002.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the license as described herein to Entergy Nuclear VY and ENO is approved, subject to the following conditions:

(1) Before the completion of the sale and transfer of Vermont Yankee, Entergy Nuclear VY and ENO shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Entergy Nuclear VY and ENO have obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) On the closing date of the transfer of Vermont Yankee, Entergy Nuclear VY shall obtain from VYNPC all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds into a decommissioning trust for Vermont Yankee established by Entergy Nuclear VY. If the amount of such funds does not meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75, Entergy Nuclear VY shall at such time deposit additional funds into the trust and/or obtain a parent company guarantee (to be updated annually) and/or obtain a surety pursuant to 10 CFR 50.75(e)(1)(iii) in a form acceptable to the NRC and in an amount or amounts which, when combined with the decommissioning trust funds for the facility that have been obtained and deposited as required above, equals or exceeds the total amount required for the facility pursuant to 10 CFR 50.75. To the extent Entergy Nuclear VY will obtain a parent company guarantee and/or surety to comply with the requirements of this Order, specific documentation of (a) the form of the guarantee and/or surety, and (b) the satisfaction of applicable financial tests

³ Adapted from OSHA's Cranes and Derricks Standard (§ 1926.550(g)(4)(ii)(H)).

and requirements for such guarantee and/or surety under NRC regulations shall be provided to the Director of the Office of Nuclear Reactor Regulation no later than 30 days prior to the closing of the transfer of the facility. The decommissioning trust, and surety if utilized, shall be subject to or be consistent with the following requirements, as applicable:

a. Decommissioning Trust

(i) The decommissioning trust agreement must be in a form acceptable to the NRC.

(ii) With respect to the decommissioning trust funds, investments in the securities or other obligations of Entergy Corporation and its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

(iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(v) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

b. Surety

(i) The surety agreement must be in a form acceptable to the NRC and be in accordance with all applicable NRC regulations.

(ii) The surety company providing any surety obtained to comply with this Order shall be one of those listed by the U.S. Department of the Treasury in the most recent edition of *Circular 570* and

shall have a coverage limit sufficient to cover the amount of the surety.

(iii) Entergy Nuclear VY shall establish a standby trust to receive funds from the surety, if a surety is obtained, in the event that Entergy Nuclear VY defaults on its funding obligations for the decommissioning of Vermont Yankee. The standby trust agreement must be in a form acceptable to the NRC, and shall conform with all conditions otherwise applicable to the decommissioning trust agreement.

(iv) The surety agreement must provide that the agreement cannot be amended in any material respect, or terminated, without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(3) Entergy Nuclear VY shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.

(4) Entergy Nuclear VY and ENO shall take no action to cause Entergy Global Investments, Inc., or Entergy International Holdings Ltd. LLC, or their parent companies to void, cancel, or modify the lines of credit to provide funding for Vermont Yankee as represented in the application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.

(5) After receipt of all required regulatory approvals of the transfer of Vermont Yankee, Entergy Nuclear VY, ENO, and VYNPC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the sale and transfer of Vermont Yankee no later than 7 business days prior to the date of closing. If the transfer of the license is not completed by May 30, 2003, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may, in writing, be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 5, 2001, supplemental letters dated November 7 and 8, 2001, and

January 23 and April 30, 2002, and the safety evaluation dated May 17, 2002, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 17th day of May 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02-12990 Filed 5-22-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket 72-1014]

Holtec International; Issuance of Environmental Assessment and Finding of No Significant Impact

Introduction

By letters dated January 17 and April 10, 2002, Holtec International (Holtec or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirement of 10 CFR 72.248(c)(6). This requirement requires certificate holders to file an updated Final Safety Analysis Report (FSAR) to the Nuclear Regulatory Commission (NRC or the Commission) every 24 months from the date of issuance of a Certificate of Compliance (CoC) for a spent fuel storage cask design. Holtec, located in Marlton, New Jersey, is the holder of CoC Number 1014 for the HI-STORM 100 storage cask system, and is seeking NRC approval to delay filing of an updated FSAR for the cask design. The HI-STORM 100 storage cask system is approved for use under the general license provisions of subpart K of 10 CFR part 72, and is designed for the dry storage of spent nuclear fuel at U.S. nuclear power facilities. NRC issued the CoC for the HI-STORM 100 storage cask system on May 31, 2000, (effective date). Holtec is currently required to file an updated FSAR by May 31, 2002, in accordance with 10 CFR 72.248(c)(6).

Environmental Assessment (EA)

Identification of Proposed Action

The applicant is seeking Commission approval to delay filing of an updated FSAR for the HI-STORM 100 storage cask system to the NRC within 24 months after the HI-STORM 100 CoC

was issued. The applicant requests an exemption from the requirement of 10 CFR 72.248(c)(6), which states that "Updates [of the FSAR] shall be filed every 24 months from the date of issuance of the CoC." NRC issued the CoC for the HI-STORM 100 cask system on May 31, 2000, (CoC effective date), which would require filing by May 31, 2002, to satisfy 10 CFR 72.248(c)(6). The proposed action before the Commission is whether to approve a delay in the filing of the updated FSAR, and whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action

Holtec requested the exemption to 10 CFR 72.248(c) to allow sufficient time to incorporate the FSAR changes that are associated with its license application to amend the CoC for the HI-STORM 100 storage cask system. This license application and amendment was designated as Amendment No. 1 to CoC Number 1014. The Commission issued a direct final rule and a proposed rule to amend its regulations to include Amendment No. 1 to the CoC for the HI-STORM 100 in its list of approved spent fuel storage casks on March 27, 2002, (67 FR 14627 and FR 14662). A final effective rule is not expected to be in place prior to May 31, 2002. Therefore, Holtec has requested to file an updated FSAR within 60 days after Amendment No. 1 is issued (effective date of final rule), in lieu of May 31, 2002. Holtec stated that approval of this delay will allow the compilation of FSAR changes related to Amendment No. 1, with other FSAR changes that are allowed under 10 CFR 72.48.

Otherwise, an update to the FSAR by May 31, 2002, would not include FSAR changes associated with Amendment No. 1.

Environmental Impacts of the Proposed Action

The Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" (55 FR 29181 (1990)), considered the potential environmental impacts of storage casks that are used to store spent nuclear fuel under a CoC, and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not affect the use of the HI-STORM 100 cask system to store spent nuclear fuel under the approved CoC, and in accordance with the regulations of 10 CFR part 72. Filing an updated FSAR to the NRC by a certificate holder is an administrative requirement and does not involve any radioactive materials or use of natural

resources. Therefore, there are no radiological impacts or non-radiological impacts from a delay in filing an updated FSAR. Based upon this information, a delay in filing will have no significant impact on the environment.

Alternative to the Proposed Action

Since there is no environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed actions would be to deny approval of the exemption and not allow a delay in the filing of the updated FSAR. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered, and that the applicant has a legitimate need to delay the filing of an updated FSAR, the Commission concludes that the preferred alternative is to grant the exemption to 10 CFR 72.248(c)(6).

Agencies and Persons Consulted

Ms. Alyse Peterson, Project Manager, New York State Energy Research and Development Authority, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.248(c)(6) will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption, and has made a finding of no significant impact on the environment for the proposed exemption.

Conclusion

The proposed exemption requested by Holtec will not authorize use of the HI-STORM 100 storage cask design specified in Amendment No. 1 to the CoC. Authorization will only occur if and when Amendment No. 1 to the CoC, is issued by the NRC (effective date of final rule). In addition, NRC approval or denial of this exemption request should not be construed as an NRC predisposition to favorably or unfavorably consider any comments

received on the proposed rule for Amendment No. 1 to the CoC.

For further details with respect to the exemption request, see the letters dated January 17 and April 10, 2002, which are available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Nos. ML020520212 and ML021070603. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdrr@nrc.gov.

Dated at Rockville, Maryland, this 15th day of May 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02-12992 Filed 5-22-02; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25577; 812-12190]

SA Funds—Investment Trust and Assante Asset Management Inc.; Notice of Application

May 17, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

Summary of the Application: Applicants, SA Funds—Investment Trust (the "Trust") and Assante Asset Management Inc. ("Adviser"), request an order to permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Filing Dates: The application was filed on July 24, 2000 and amended on May 7, 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 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 June 11, 2002, and should be accompanied by proof of service on 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Stephanie M. Nichols, Esq., State Street Corporation, One Federal Street, 9th Floor, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is currently comprised of eight series, each with its own investment objectives, policies and restrictions (each a "Fund" and collectively, the "Funds"). The Adviser, an indirect wholly-owned subsidiary of Assante Corporation, is registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser to each of the Funds.¹

¹ Applicants also request relief with respect to any future Funds, and any other registered open-end management investment company and its series that in the future (a) are advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser, (b) operates in substantially the same manner as the Funds with regard to the Adviser's responsibility to select, evaluate and supervise Subadvisers, as defined below, and (c) complies with the terms and conditions in this application ("Future Funds," and together with the Funds, the "Funds"). The only existing investment company that currently intends to rely on the requested order is named as an applicant. No Fund will contain in its name the name of any Subadviser, as defined below.

2. The Trust, on behalf of each Fund, and the Adviser have entered into an investment advisory and administrative services agreement ("Advisory Agreement") that was approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees") and the initial shareholder of each Fund. Under the terms of the Advisory Agreement, the Adviser, subject to Board oversight, has overall supervisory responsibility for the investment program for each Fund. The Adviser and each Fund have entered into separate investment subadvisory agreements ("Subadvisory Agreements") with one or more subadvisers ("Subadvisers") pursuant to which the Subadviser makes the specific investment decisions for the Fund. Each Subadviser is registered or exempt from registration under the Advisers Act.

3. Pursuant to the Advisory Agreement, the Adviser continuously evaluates the performance of each Subadviser, recommends to the Board the appointment of new Subadvisers as circumstances warrant, and negotiates and renegotiates the terms of the Subadvisory Agreements, including the subadvisory fees, with the Subadvisers. The Adviser selects Subadvisers based on the Adviser's continuing evaluation of their skills in managing assets pursuant to particular investment styles. The Adviser also recommends to the Board the termination of Subadvisers. Each Fund pays the Adviser a fee payable monthly at an annual rate based on the Fund's average daily net assets. The Trust also pays to the Adviser the subadvisory fees of the Subadvisers at a rate that has been negotiated between the Adviser and Subadvisers, subject to approval by the Board. The Adviser then pays the Subadvisers the subadvisory fees.

4. Applicants request an order to permit the Adviser, subject to the oversight of the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. Applicants state that shareholder approval of a Subadvisory Agreement with a Subadviser that would be an "affiliated person," as defined in section 2(a)(3) of the Act, of the Trust or the Adviser (other than by reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser")) will be obtained. None of the current Subadvisers is an Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if 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 an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that the shareholders are relying on the Adviser and the Board to select Subadvisers to manage the Fund's portfolio. Applicants assert that, from the perspective of the investor, the role of the Subadvisers with respect to the Funds is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants believe that permitting the Adviser to perform those duties for which the shareholders of the Funds are paying the Adviser—the selection, supervision and evaluation of Subadvisers—without incurring unnecessary delay or expense is appropriate in the interests of the Funds' shareholders and will allow each Fund to operate more efficiently. Applicants note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act, including the requirements for shareholder approval. Applicants also note that shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in this application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or by its initial shareholder, provided that, in the case of approval by the initial shareholder, the pertinent Fund's shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, the Fund shareholders will be furnished all information about a new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders with an information statement meeting the disclosure requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

7. The Adviser will provide management services to each Fund, including overall supervisory

responsibility for the general management and investment of each Fund's portfolio, and, subject to review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) select Subadvisers; (c) monitor and evaluate the performance of Subadvisers; (d) ensure that Subadvisers comply with each Fund's investment objectives, policies, and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance; and (e) allocate and, where appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. Any change to a Subadvisory Agreement that would result in an increase in the overall management and advisory fees payable by the Fund will be approved by the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12980 Filed 5-22-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45929; File No. SR-Amex-2001-74]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change as Amended by Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change Relating to the Codification of the Exchange's Auto-Ex Policy and Calculation of the NBBO for Use in Auto-Ex

May 15, 2002.

I. Introduction

On September 10, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") 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 change³ relating to disengagement of the Exchange's automatic execution system ("Auto-Ex"), and declaring quotes from away markets unreliable. On January 31, 2002 and April 8, 2002, Amex submitted Amendment Nos. 1⁴ and 2⁵ to the proposed rule change, respectively. The proposed rule change, as amended by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on April 15, 2002.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Amex (as well as the other floor-based options exchanges) to adopt new, or amend existing rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automated execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

⁴ 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.

⁵ 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").

⁶ See Securities Exchange Act Release No. 45711 (April 9, 2002), 67 FR 18274 (April 15, 2002).

The Commission received no comments on the amended proposal. On May 10, 2002, Amex submitted Amendment No. 3 to the proposed rule change.⁷ This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and approving Amendment No. 3 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes 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 in: (i) The Exchange disseminating quotations or last sale information to OPRA; (ii) receiving information from OPRA to be displayed on the trading floor or used to calculate the best bid or offer; or (iii) receiving market information regarding the underlying security. 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 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 Act⁸ 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 (an "Unusual Market Exception"). 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 must 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, the 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;⁹ 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.

In Amendment No. 3, Amex proposes to clarify that unusual market conditions will vary, depending upon trading conditions in the option and/or its underlying security. There are no rules in the markets for the underlying securities requiring spreads between the bid and offer to be within specific parameters, however, depending upon the volatility and liquidity of the underlying security, its spread is usually within a specific range, which can be considered normal for that security. A decision to disengage Auto-Ex would occur when the spreads between the bid and the offer in a specific underlying security are wider than normal. Given the subjective nature of this determination, Market Operations will not be able to disengage Auto-Ex in this situation unless they have obtained approval of either the Senior Supervisory Officer (the Vice Chairman of the Exchange's Board of Governors), one of the four Floor Governors (members of the Exchange's Board of Governors) or one of the three Senior Floor Officials (former Governors who have remained active on the trading floor).

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.

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.

⁷ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated May 9, 2002 ("Amendment No. 3"). In Amendment No. 3, Amex proposes to clarify the following: (1) The Exchange's procedures for disengaging Auto-Ex pursuant to the unusual market exception, and (2) the role of the Auto-Ex Enhancement Committee with respect to the by-pass feature of Auto-Ex.

⁸ 17 CFR 240.11Ac1-1(b)(3).

⁹ Pursuant to Exchange Rules 958A and 115 and New York Stock Exchange Rule 60, at 3:40 p.m.

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 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 Exchange Rule 958A or under Rule 11Ac1-1 under the Securities Exchange Act of 1934.¹⁰ 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.

In Amendment No. 3, Amex clarified that the Auto-Ex Enhancement Committee, which is comprised of the Exchange's four Floor Governors and the Chairman (or their designee) of the Specialists Association, the Options Market Makers Association and the Floor Brokers Association, will, upon the request of a specialist, review and designate which option classes or series are eligible for this by-pass feature. When making this designation, the Committee may consider such factors as the amount of trading activity in the option class or series, the average daily trading volume of the option; volatility

of the underlying security; and any other factors as the Committee deems appropriate. The Committee will determine the number of executions that can occur before this by-pass feature is activated. In addition, Market Operations staff will re-engage Auto-Ex within three minutes unless the specialist has obtained additional approvals.

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 Amex Options Display Book ("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; and (iii) whenever a better bid or offer is being disseminated by another options exchange.¹¹ The Amex Order File, 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

A Floor Governor or Exchange Official 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") 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.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹² and, in particular, the requirements of Section 6 of the Act¹³ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁴ because it provides objective criteria and well-defined procedures for: (1) Disengaging and reengaging Auto-X, which should increase the likelihood that Auto-X will not be disengaged in a discriminatory manner; and (2) excluding another market's quote from the Amex's NBBO, which should increase the likelihood that Amex's NBBO will more accurately reflect the actual state of the market at a given time. Specifically, the Commission notes that the determination of a Floor Governor or Exchange Official to exclude unreliable quotes is limited to circumstances in which the away market has either directly communicated or confirmed that its quotes are unreliable. In this way, the discretion afforded to Amex

¹¹ 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 the 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.

¹² In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 240.11Ac1-1.

officials to determine that another market's options quotes are unreliable is appropriately limited. Moreover, the record keeping requirements and other proposed procedures are not unreasonable.

The Commission finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 clarifies the limits on the discretion of the Exchange to disengage or operate Auto-Ex in any manner other than the normal manner and thus, raises no novel issues of regulatory concern.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 June 13, 2002.

V. Conclusion

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2001-74), as amended by Amendment Nos. 1, and 2, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-12897 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45934; File No. SR-CBOE-2002-09]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders for Appointed Market-Makers in Index FLEX Options

May 15, 2002.

I. Introduction

On February 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 relating to the allocation of orders for Appointed Market-Makers ("AMMs") in Index FLEX Options. On March 18, 2002, the CBOE submitted Amendment No. 1 to the proposed rule change. The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on April 2, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The CBOE is proposing to amend CBOE Rule 24A.5, concerning the allocation of orders in FLEX Index Options. The proposed rule change was submitted by the CBOE pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000,⁴ which requires that respondent options exchanges adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement * * * the allocation of orders in that option class."

CBOE Rule 24A.9 provides for the appointment of Appointed Market-Makers ("AMMs") in FLEX Index Options and assigns these AMMs certain specified obligations in the

trading of such options. The proposed rule change would amend CBOE Rule 24A.5, which relates to trading procedures for FLEX Options, to permit the appropriate Floor Procedure Committee—in this case, the SPX Floor Procedure Committee—to establish a participation entitlement formula for such AMMs.

The proposed rule change would also amend the participation entitlement of a "Submitting Member," *i.e.*, the Exchange member that initiates FLEX bidding and offering by submitting a FLEX Request for Quotes ("RFQ"). Currently, a Submitting Member who has indicated an intention to cross or act as principal on a FLEX Index Options trade, and has matched or improved the best bid or offer given in response to its RFQ, is granted priority to execute the contra side of the trade—but only to the extent of the largest of 25% of the trade, a proportional share of the trade, \$1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value on a closing transaction valued at less than \$1 million. The proposed rule change would reduce the percentage participation entitlement, where it applies, from 25% to 20%.

As part of the proposed rule change, the CBOE submitted a draft Regulatory Circular with which the SPX Floor Procedure Committee would exercise its authority to set the participation entitlement formula for AMMs.⁵ Specifically, the Regulatory Circular would state that the Submitting Member is entitled to cross up to 20% of the contracts in an order that occurs as a result of the Submitting Member's RFQ when all conditions of such percentage are met. The Regulatory Circular would state further that the AMM(s) is (are) entitled to the contracts remaining in the order up to an aggregate of 40% of the order, but that the Submitting Member and the AMM(s) could not receive an entitlement that collectively equals more than 40% of the order. The remaining contracts in the order would then be allocated according to the relevant Exchange rules.⁶

The CBOE believes that it is just and equitable for AMMs in FLEX Index Options to receive a participation entitlement in return for the obligations that are imposed upon them. The CBOE believes that such an entitlement is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45633 (March 22, 2002), 67 FR 15643 (April 2, 2002) ("Notice"). Although the Notice stated that the date of filing of Amendment No. 1 was March 18, 2002, the amendment was deemed filed on March 15, 2002.

⁴ Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

⁵ The Exchange has stated that changes to this Regulatory Circular, including changes to the participation entitlement formula, will be submitted to the Commission pursuant to Section 19(b) of the Act. See Notice.

⁶ The CBOE has stated that AMM(s) would not be entitled to a share in these remaining contracts unless all other participants have been satisfied. See Notice.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

important to encourage members of the Exchange to become AMMs, because FLEX Index Options are customized and do not have the same liquidity as standardized options, and AMMs are subject to greater risk when quoting such options.

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.⁷ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁸

The Commission believes that it is reasonable for the Exchange to offer AMMs a participation guarantee to encourage Exchange members to become AMMs and provide liquidity in FLEX Index Options. The Commission notes that the proposed entitlement of the AMM together with any guaranteed participation granted to the Submitting Member could not exceed 40 percent of an order. The Commission has found with respect to participation guarantees in other contexts that a maximum combined guarantee of 40 percent is not inconsistent with statutory standards of competition and free and open markets.⁹

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2002-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of an exchange, among other things, be 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁹ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45935; File No. SR-CBOE-2002-08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders

May 15, 2002.

I. Introduction

On February 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 relating to the allocation of orders. On March 22, 2002, and March 27, 2002, the CBOE submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 8, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

CBOE Rule 6.45, to be retitled "Priority of Bids and Offers—Allocation of Trades," includes provisions that govern the allocation of an order on the Exchange when more than one market participant is bidding or offering at the best price to fill that order. As described below, the CBOE is proposing to amend Rule 6.45 by adding a number of provisions concerning specific aspects of the allocation process, and by clarifying how an order is to be allocated in certain situations where the rule currently is silent.

The CBOE is also proposing to amend Rule 6.45 by adding a clause that stipulates that the rule's provisions apply except as provided by certain other CBOE rules concerning the allocation of orders and the participations of various market participants. These other rules include, but are not limited to, CBOE Rule 6.2A ("Rapid Opening System"), CBOE Rule 6.8 ("RAES Operations"), CBOE Rule 6.9 ("Solicited Transactions"), CBOE Rule 6.47 ("Priority on Split Price Transactions"), CBOE Rule 6.74 ("Crossing Orders") and CBOE Rule

8.87 ("Participation Entitlement of DPMs"), as well as CBOE Regulatory Circulars approved by the Commission concerning participation rights.⁴

The proposed rule change was submitted by CBOE pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000,⁵ which requires that the options exchanges adopt new, or amend existing, rules to make express any practice or procedure "whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class."

CBOE Rule 6.45 currently requires that the highest bid or lowest offer ("best bid or offer") shall have priority. The rule also provides that, with limited exceptions set forth in 6.45(c) and (d), an order representing the best bid or offer in the customer limit order book receives priority over another order at the same best price. The proposed rule change would add CBOE Rule 6.45(a)(i) to provide that if more than one public customer order is represented in the customer limit order book at the best price, priority will be afforded to such orders in the sequence in which they were received by the OBO or DPM.

CBOE is also proposing to add CBOE Rule 6.45(a)(ii) to apply with respect to bids or offers for orders represented by a Floor Broker, a Designated Primary Market-Maker ("DPM") acting as agent under CBOE Rule 8.85(b), or an Order Book Official ("OBO"), or bids or offers made in response to a specific request from a Market-Maker. In these instances, the proposed rule change would provide that the Floor Broker, DPM, OBO, or Market-Maker will determine which market participants responded at the best market at the time the market was established. This provision would further state that the Floor Broker, DPM, OBO, or Market-Maker will determine the sequence in which bids (offers) were made, subject to the following:

(1) If there are two or more bids (offers) at the best price, and an order in the customer limit order book is not involved, priority is afforded to the

⁴ The current participation rights of Designated Primary Market-Makers ("DPMs") under CBOE rules are detailed in CBOE Regulatory Circular RG 00-193, dated December 28, 2000. See Securities Exchange Act Release No. 43750 (December 20, 2000), 65 FR 82420 (December 28, 2000).

⁵ Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45670 (March 28, 2002), 67 FR 16782 (April 8, 2002) ("Notice").

orders in the sequence in which they were made.

(2) If the bids (offers) were made at the same time, or in the event the Floor Broker, DPM, OBO, or Market-Maker cannot reasonably determine the sequence in which the bids (offers) were made, priority will be apportioned equally.

(3) If the Floor Broker, DPM, OBO, or Market-Maker cannot reasonably determine the sequence in which the bids (offers) were made beyond a certain number of market participants, the Floor Broker, DPM, OBO, or Market-Maker will provide for the remaining contracts, if any, to be apportioned equally among those market participants who bid (offered) at the best price at the time the market was established.

(4) In the event a market participant declines to accept any portion of the available contracts, the proposed rule change would provide that any remaining contracts will be apportioned equally among the other market participants who bid (offered) at the best price at the time the market was established until all contracts have been apportioned.

The CBOE is also proposing to add CBOE Rule 6.45(iii) to provide that any contracts remaining in an order after the operation of CBOE Rule 6.45(ii) will be apportioned equally between any other market participants in the trading crowd who bid (offered) at the best price in a reasonably prompt manner subsequent to the time the market was established.

CBOE Rule 6.45(iv) would further provide that whenever a member requests from members of a trading crowd a single bid in excess of the RAES order eligibility size for that option class, as provided for in Interpretation .11 to CBOE Rule 8.7, each member of the trading crowd will be apportioned a share of the executed order based on an approximate pro rata percentage, to the extent practicable, of the crowd member's portion of the size of the original single bid. The new rule provision also would provide that the member requesting the single bid will determine what constitutes an approximate pro rata percentage of the order that is executed with respect to each member of the trading crowd who participated in making the single bid.

Finally, the proposed rule change would add Interpretation and Policy .02 to CBOE Rule 6.45, to clarify that the provisions of CBOE Rule 6.45 are subject to the operation of CBOE Rules 8.7, Interpretation and Policy .05,⁶ and

CBOE Rule 8.51 ("Firm Disseminated Market Quotes").

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.⁷ For the reasons discussed below, 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, and, in particular, with the requirements of Section 6(b)(5) of the Act.⁸

The Commission believes that the provision of the proposed rule change specifying the allocation sequence where more than one public customer order is represented in the customer limit order book clarifies that priority in such situations is established according to the sequence in which the orders were received by the OBO or DPM and is consistent with other Exchange rules that reflect the principle of time priority.

The Commission also believes that other provisions of the proposed rule change better specify the Exchange's priority rules by setting forth how an order is to be allocated among market participants bidding or offering at the best price in situations when: (1) Their competing bids or offers are made simultaneously; (2) the sequence in which their bids or offers were made cannot be reasonably determined; or (3) the sequence cannot be reasonably determined beyond a certain number of participants. The Commission believes that the proposed amendment establishes a fair and equitable manner of apportioning an order in these situations by providing that the bids or offers have equal priority, so that each participant receives an equal share of the order.

In the Commission's view, the proposed rule change further provides important clarification as to who is

under normal market conditions a Market-Maker's bid or offer for a series of options of unspecified size is for five contracts except that a Market-Maker may be compelled to buy or sell a specific number of contracts at the disseminated bid or offer pursuant to his obligations under Rule 8.51.

⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

responsible, in any given trade, to determine which market participants responded with bids or offers at the best market at the time a market was established, and to allocate the trade according to the applicable priority rules. As discussed above, the proposed rule change assigns this responsibility to the Floor Broker, the DPM acting as agent, the OBO that is representing the order to which market participants are responding, or to a market maker with respect to bids made in response to his specific request. The Commission believes that this is a reasonable method of assigning responsibility for allocating a trade, particularly because the market participant representing the order or initiating the trade generally is in the best position to determine the identity and sequence of who responded. The CBOE has represented that it has the ability to determine the identity of the individual who allocated a particular trade,⁹ and the Commission believes that the ability to identify such individual is important to the Exchange's ability to monitor for any violation of Exchange allocation rules.

The proposed rule change further specifies how participation in a trade is allocated in the situation where a member requests a single bid from members of a trading crowd and the trade is effected pursuant to Interpretation .11 to CBOE Rule 8.7.¹⁰ The Commission believes that the proposed amendment, which would provide that the order be allocated based on an approximate pro rata percentage, to the extent practicable, of the respective sizes that crowd participants have indicated they are willing to buy or sell, is a reasonable way to apportion participation in such trades. The Commission believes that it is reasonable, as provided by the proposed rule change, to assign the member who requested the single bid the responsibility to determine what constitutes an approximate pro rata percentage of the order for each participant.

The proposed rule change also would make clear that in the event a market participant declines to accept a portion of the contracts to which he or she is entitled, the remainder is to be apportioned equally among the participants who bid or offered at the best price when the market was established. The Commission notes, in this connection, that the CBOE's proposed Interpretation and Policy .02

⁹ See Notice, *supra* note 3, at n.6.

¹⁰ See Securities Exchange Act Release No. 45800 (April 22, 2002), 67 FR 21305 (April 30, 2002) (SR-CBOE-2001-65).

⁶ Interpretation and Policy .05 to CBOE Rule 8.7 provides: Unless an options class is exempted by the appropriate Market Performance Committee,

to CBOE Rule 6.45 provides that the provisions of CBOE Rule 6.45 are subject to CBOE Rule 8.7, Interpretation and Policy .05, and CBOE Rule 8.51, which set forth market maker responsibilities and firm quote requirements.

The Commission further notes that the CBOE has made clear that a DPM that already has been allocated its DPM participation entitlement amount would not receive a share of the declined contracts unless the other market participants do not wish to participate in the declined contracts.¹¹ The Commission believes that this will help assure fair allocation of orders and maintain a competitive environment on the Exchange.

The Commission also finds reasonable CBOE's proposal to apportion equally among any other market participants in the trading crowd who bid at the best price in a reasonably prompt manner subsequent to the time the market was established, any contracts that remain in an order after giving effect to the priority rules described above.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2002-08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12982 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45936; File No. SR-CBOE-2002-10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders for Lead Market-Makers and Supplemental Market-Makers Logged On to the Exchange's Rapid Opening System

May 15, 2002.

I. Introduction

On February 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 relating to the allocation of orders for Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") logged on to the Exchange's Rapid Opening System ("ROS"). On March 15, 2002 and March 22, 2002, CBOE submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on April 2, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

CBOE is proposing changes to Interpretation and Policies .01 of CBOE Rule 6.2A ("Interpretation .01"), relating to the allocation of orders for LMMs and SMMs logged onto ROS.⁴ The proposed rule change was filed by the CBOE pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires that respondent options exchanges adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement * * * the allocation of orders in that option class."⁵

Currently, Interpretation .01 limits the use of ROS to LMMs and SMMs in S&P 100 ("OEX") Options. The proposed rule change would establish that ROS may be used by LMMs and SMMs appointed pursuant to CBOE Rule 8.15 to conduct rotations in any options class. The proposed rule change would also clarify that despite CBOE Rule 6.2A(b), which assigns ROS contracts to trade to participating market-makers, ROS contracts to trade will be assigned only to the LMMs and SMMs logged onto ROS in crowds to which LMMs and SMMs are appointed.

The proposed rule change would also permit the appropriate Floor Procedure Committee to establish a participation right for the LMM who determines the

formula for generating automatically updated market quotations during the trading day and provides the primary quote feed for an option class during the current expiration month. This participation right would apply only to ROS contracts to trade, and would be subject to the following conditions: (1) The LMM would receive this participation right only during the time it is actually providing the primary quote feed for an option class; and (2) the LMM must log onto ROS the minimum number of times established by the appropriate Floor Procedure Committee.

As part of the proposed rule change, the CBOE also submitted the draft text of a Regulatory Circular that would establish a specific entitlement formula for qualifying LMMs, and would be used by the appropriate Floor Procedure Committee to adopt the participation entitlement. The formula provides for participation entitlements that range from 34 percent to 40 percent for the LMM providing the primary quote feed, depending on the total number of appointed LMMs and SMMs in the option, when the number is three or more. If the number is two, each of the two will be assigned an equal portion of ROS contracts, and if there is only one, all ROS contracts to trade will be assigned to the appointed LMM or SMM.⁶

In explaining the purpose of the participation guarantee, the CBOE stated that it has introduced a vendor quote program in OEX to replace the Autoquote system. The vendor system accepts a quote stream from a firm's proprietary quote system and then sends this quote information to the Trading Support System to be disseminated as market quotes. The CBOE believes that the LMM that provides the primary quote feed for an option class during the current expiration cycle provides a valuable service that ensures that the quotes are being updated in timely fashion to reflect the current state of the market.

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.⁷ For the reasons discussed below, the Commission finds that the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45640 (March 25, 2002), 67 FR 15644 (April 2, 2002) ("Notice").

⁴ ROS is the Exchange's automated system for opening classes of options at the beginning of the trading day or for re-opening classes of options during the trading day. See CBOE Rule 6.2A.

⁵ See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

⁶ The Exchange has stated that changes to this Regulatory Circular, including changes to a participation entitlement formula, will be submitted to the Commission pursuant to Section 19(b) of the Exchange Act. See Notice.

⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ See Notice, *supra* note 3, at n.8.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁸

In the Commission's view, it is reasonable to expand the use of ROS to all options classes in which LMMs and SMMs conduct rotations. The Commission also believes that it is reasonable to assign ROS contracts to trade only to the LMMs and SMMs logged onto ROS in crowds in which LMMs and SMMs are appointed. The Commission notes that when Interpretation .01 was first adopted to permit the use of ROS under the LMM system (at the time, for OEX options), the CBOE stated that ROS was not meant to supplant the LMM system, which the Exchange believed had added accountability to openings, but to be used as a tool by the LMM to facilitate openings.⁹

The Commission further believes that it is reasonable to grant a participation entitlement to the LMMs who provide the primary quote feed for an option class during an option cycle is reasonable, in view of the service such LMMs provide. The Commission notes that the proposed entitlement would never be greater than 40 percent. The Commission has found with respect to participation guarantees in other contexts that 40 percent is not inconsistent with statutory standards of competition and free and open markets.¹⁰

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-2002-10) be, and hereby is, approved.

⁸ 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of an exchange, among other things, be 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁹ See Securities Exchange Act Release No. 4366 (December 4, 2000), 65 FR 77943 (December 13, 2000). The CBOE also stated at the time that "to the extent that market-makers want to participate in the opening of a series in which they do not hold LMM or SMM appointments, they will continue to be able to transmit written non-cancelable proprietary and market-makers orders to the LMM in the appropriate zone ten minutes prior to the opening of trading, pursuant to the terms of Interpretation .02 to CBOE Rule 24.13." *Id.*

¹⁰ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

¹¹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12984 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45933; File No. SR-NASD-2002-27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto Amending NASD Rule 3070 Concerning the Reporting of Criminal Offenses by Members and Persons Associated With a Member to the NASD

May 15, 2002.

On February 21, 2002, 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"), 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 amend NASD Conduct Rule 3070 to limit reporting under this category to any felony, certain types of misdemeanors, and substantially equivalent activity in a domestic, foreign or military court. According to NASD Regulation, this proposed rule change would conform NASD Rule 3070(a)(5) to a proposed rule change by the New York Stock Exchange, Inc. ("NYSE") to amend NYSE Rule 351(a)(5).³ The proposed rule change was published for comment in the **Federal Register** on March 8, 2002.⁴ The Commission received one comment letter on the proposal,⁵ which supports the proposed rule change. On May 14, 2002, NASD Regulation filed Amendment No. 1 to the proposed rule change with the Commission.⁶ This

¹² 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. 45869 (May 3, 2002), 67 FR 31398 (May 9, 2002) (approving SR-NYSE-2002-06).

⁴ See Securities Exchange Act Release No. 45493 (March 1, 2002), 67 FR 10783.

⁵ See letter to Jill M. Peterson, Assistant Secretary, Commission, from Selwyn J. Notelovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., dated March 21, 2002 ("Schwab Letter").

⁶ See letter to Katherine England, Assistant Director, Division of Market Regulation, Commission, from Shirley Weiss, Associate General

order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁷ and, in particular, the requirements of Section 15A of the Act⁸ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act⁹ because narrowing the scope of reportable criminal offenses that members and member organizations would be required to report to the NASD is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities. In particular, by continuing to require that every felony be reported, but only the proposed misdemeanors, would in effect, minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Association. Moreover, the proposed rule change would continue to capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory disqualification under Section 3(a)(39) of the Act.¹⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change and Amendment No. 1 thereto (File No. SR-NASD-2002-27) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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Counsel, NASD Regulation, dated May 14, 2002 ("Amendment No. 1"). In Amendment No. 1, NASD Regulation amended the proposed rule change to require that an arrest, arraignment, or conviction before a *military* court of any of the enumerated crimes be reported to the NASD. In addition, NASD Regulation added the conspiracy to commit any one of the enumerated misdemeanors under NASD Conduct Rule 3070(a)(5) to the list of crimes that must be reported to the NASD. This is a technical amendment and is not subject to notice and comment.

⁷ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78c(a)(39).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45954; File No. SR-NASD-2002-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Subordination Agreement Investor Disclosure Document

May 17, 2002.

On January 17, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), 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 require, as part of a subordination agreement, the execution of a Subordination Agreement Investor Disclosure Document ("Disclosure Document"). On March 21, 2002, NASD Regulation filed Amendment No. 1 to the proposed rule change with the Commission.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the *Federal Register* on April 16, 2002.⁴ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of section 15A of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,⁶ which, among other things, requires that 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. The Commission believes that the Disclosure Document should provide investors with an understanding of the key risks associated with loaning money or securities to a broker-dealer under a subordination agreements.⁷

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change and Amendment No. 1 thereto (File No. SR-NASD-2002-12) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland

Deputy Secretary

[FR Doc. 02-12986 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45930; File No. SR-PCX-2001-13]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to its Auto-Ex System

May 15, 2002.

I. Introduction

On January 30, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 change³ relating to disengagement of the Exchange's Automatic Execution System for

⁷ 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).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the PCX (as well as the other floor-based options exchanges) to adopt new, or amend existing rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automated execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

Options ("Auto-Ex"), increasing or decreasing Auto-Ex order size, and declaring quotes from away markets unreliable. PCX submitted Amendment No. 1 to the proposed rule change on April 9, 2002.⁴ The proposed rule change, as amended by Amendment No. 1, was published for comment in the *Federal Register* on April 15, 2002.⁵ The Commission received no comments on the amended proposal. This order approves the proposed rule change, as amended by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to modify PCX's Automatic Execution System Rule (Rule 6.87) to include provisions regarding: (1) Disengaging Auto-Ex and increasing or decreasing the Auto-Ex eligible order size, (2) declaring quotes from away markets unreliable, and (3) documenting these actions. The Exchange also proposes to clarify PCX Rule 6.28.

Disengaging Auto-Ex and Increasing or Decreasing the Auto-Ex Eligible Order Size

The Exchange proposes to define the 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 as follows: (1) High volatility (when a stock or the entire market is experiencing rapid and extreme price fluctuations usually accompanied by doublewide spreads); (2) large influx of orders (when volume is two or more times the average daily volume in an issue, or when an extraordinarily large options order is executed on the PCX and reported); or (3) unreliable quote feed (when the Exchange is unable to accurately collect, process and/or disseminate quotation data). Such unusual market conditions may be caused by news announcements (e.g., announcements relating to earnings speculation, economic news, reports of mergers or takeovers, or disasters).

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 Pacific Options Exchange Trading System ("POETS")⁶

⁴ 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").

⁵ See Securities Exchange Act Release No. 45712 (April 9, 2002), 67 FR 18285 (April 15, 2002).

⁶ POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system, an on-line

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NASD Regulation made certain clarifications to the Disclosure Document ("Amendment No. 1"). Letter from Patrice M. Cliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 2002.

⁴ Securities Exchange Act Release No. 45721 (April 10, 2002), 67 FR 18661.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

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 PCX Rule 6.28(c)(6) concerning suspension of Auto-Ex and place it in PCX Rule 6.87(h)(3)(B). PCX Rule 6.28(c)(6) 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).

For consistency and clarity, the Exchange proposes to move and revise current PCX 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 PCX Rule 6.87(h)(3)(C). The Exchange also proposes new PCX Rule 6.87(h)(3)(C) which 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 would be permitted to: (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 would be permitted to 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 would be required to 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 would be reviewed by the Options Floor Trading Committee at its next regularly

limit order book system, and an automatic market quote update system.

scheduled meeting. Whenever two Floor Officials decrease the size of orders eligible for automatic execution, the lowest number of contracts that would be permitted to be established would be five.

Additionally, the Exchange proposes to amend PCX 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 would be permitted to decrease the guaranteed Auto-Ex size in one or more option issues pursuant to the procedures set forth in PCX Rule 6.87(h)(3)(C).

Declaring Away Markets Unreliable

The Exchange proposes PCX Rule 6.87(h)(4), which would provide a Floor Official discretion to 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 would be required to be followed. First, an LMM would contact an Order Book Official ("OBO") and request that the away market be declared unreliable. Second, the OBO would contact the control room and request a declaration that the away market is unreliable. Third, if the control room confirmed that an away market is unreliable, then the OBO would contact a Floor Official and request a declaration that the away market is unreliable. Fourth, the Floor Official would review and verify the circumstances and determine whether the away market should be declared unreliable. The OBO would notify the control room that the away market is unreliable and should be removed from the NBBO calculation. Fifth, the Floor Surveillance Unit would contact the away exchange, and notify the away market that one or more of its quotes have been removed from the NBBO calculation. Sixth, the Floor Official would continue to monitor the away market that has been declared unreliable and notify the control room to return to firm mode when appropriate.

Any determination to exclude a market or any of its quotes from the Auto-Ex determination of the NBBO pursuant to the proposed rule would 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 would be reported to Exchange member firms.

Documentation

The Exchange proposes to require documentation of 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 would be required to be signed by two Floor Officials and would be required to state the system problem or market activity that led to the Floor Officials' ruling. The UAR information would be recorded in the Floor Surveillance log, which would 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.

Specifically, the following documentation would be required when an away market is declared unreliable: (1) The OBO would be required to log the issue(s) and time of the LMM's request for a declaration that the away market was unreliable; (2) the OBO would be required to prepare a 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 would be required to sign the UAR; and (4) the control room would 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.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁷ and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule

⁷ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f.

change is consistent with Section 6(b)(5) of the Act⁹ because it provides objective criteria and well-defined procedures for: (1) Disengaging and reengaging AUTO-X, which should increase the likelihood that AUTO-X will not be disengaged in a discriminatory manner; and (2) excluding another market's quote from the PCX's NBBO, which should increase the likelihood that PCX's NBBO will more accurately reflect the actual state of the market at a given time. Specifically, the Commission notes that the determination of a Floor Official to exclude unreliable quotes is limited to circumstances in which the away market has either directly communicated or confirmed that its quotes are unreliable. In this way, the discretion afforded to PCX officials to determine that another market's options quotes are unreliable is appropriately limited. Moreover, the record keeping requirements and other proposed procedures are not unreasonable.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PCX-2001-13), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-12895 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-45937; File No. SR-PCX-2002-13)

Self-Regulatory Organization; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Priority of Bids and Offers on the Options Floor and the Manner in Which Orders Must Be Allocated in Connection With Options Transactions

May 15, 2002.

I. Introduction

On February 15, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 relating to priority of bids and offers on the options floor and the manner in which orders must be allocated in connection with options transactions. On March 12, 2002, the PCX submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **FEDERAL REGISTER** on April 2, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The PCX is proposing to adopt new rules, and to amend existing rules, to include practices and procedures whereby option orders are allocated on the Exchange's Options Trading Floor to address situations where the rules are currently silent. This rule filing is being submitted to the Commission pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000.⁴

The proposed rule change includes provisions that concern several areas, as described below:

a. Obligations of Market Makers

The Exchange is proposing to adopt new PCX Rule 6.37(e)(2), which would prohibit any practice or procedure whereby Market Makers trading any particular option issue determine by agreement the allocation of orders that may be executed in that issue.

b. Simultaneous Bids and Offers

Currently, PCX Rule 6.75(a) provides that the highest bid has priority, but where two or more bids for the same option contract represent the highest price and one is displayed by the Order Book Official, that bid receives priority over any other bid at the post. If two or more bids represent the highest price and a bid displayed by an Order Book Official is not involved, the rule provides that priority is afforded to those bids in the sequence in which they are made. PCX Rule 6.75(b) applies the same priority principles to offers.

The Exchange is now proposing to adopt new PCX Rule 6.75(c), entitled "Simultaneous Bids and Offers." This proposed provision states that, except as

otherwise provided, if the bids (or offers) of two or more members are made simultaneously, or if it is impossible to determine clearly the order of time in which they were made, such bids (or offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis.

c. Order Allocation Procedures

1. In General: Determination of Priority Sequence

Proposed PCX Rule 6.75(f)(1) states that a Floor Broker is responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor in response to the Floor Broker's bid, offer, or call for a market. It further states that any disputes regarding a Floor Broker's bid, offer, or call for a market. It further states that any disputes regarding a Floor Broker's determination of time priority sequence will be resolved by the Order Book Official, provided that such determinations of the Order Book Official are subject to further review by two Floor Officials, pursuant to PCX Rule 6.77.

Proposed PCX Rule 6.75(f)(2) provides that when a Floor Broker's bid or offer has been accepted by more than one member, that Floor Broker must designate the members who were first, second, third, and so forth. It further states that, except as otherwise provided, the member with first priority is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. If there are any contracts remaining, the member with second priority will be entitled to buy or sell as many contracts as there are remaining in the Floor Broker's order, and so on, until the Floor Broker's order has been filled entirely.

Proposed PCX Rule 6.75(f)(3) provides that a Market Maker is responsible for determining the sequence in which bids and offers are vocalized on the Trading Floor in response to that Market Maker's bid, offer, or call for a market. Likewise, an Order Book Official is responsible for determining the sequence in which bids and offers are vocalized on the Trading Floor in response to the Order Book Official's bid, offer, or call for a market. The proposed rule further provides that the order allocation procedures for Market Makers and Order Book Officials, including the determination of time priority sequence, are the same as those for Floor Brokers as set forth in proposed PCX Rule 6.75(f)(1) as described above.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

³ See Securities Exchange Act Release No. 45634 (March 22, 2002), 67 FR 15649 (April 2, 2002) ("Notice"). Although the Notice stated that the date of filing of the proposed rule change was February 19, 2002, the proposal was deemed filed on February 15, 2002.

⁴ See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

2. LMM Guaranteed Participation

Proposed PCX Rule 6.75(f)(4)(A) provides that if a Lead Market Maker ("LMM") establishes first priority during the vocalization process, the LMM will be entitled to buy or sell as many contracts as the Floor Broker may have available to trade. However, if the LMM does not establish first priority during the vocalization process, but does establish second, third, or some other time priority sequence, the LMM will be entitled to buy or sell the number of contracts equal to the LMM's guaranteed participation level (pursuant to PCX Rule 6.82(d)(2)) plus any contracts the Floor Broker has remaining after the bids or offers of other members with higher time priority than the LMM have been satisfied.

Proposed PCX Rule 6.75(f)(4)(B) provides that if one or more orders in the limit order book have priority over an LMM's bid or offer, then the LMM's guaranteed participation level will apply only to the number of contracts remaining after all contracts in the limit order book that are at, or better than, the LMM's bid or offer have first been satisfied.

Proposed PCX Rule 6.75(f)(4)(C) provides that LMMs may waive some or all of their guaranteed participation on particular trades, but only to the extent that doing so is permissible under PCX Rule 6.86 ("Firm Quotes"). In such circumstances, if the LMM has waived the right to trade a certain number of option contracts, those option contracts will then become available for execution by the member (or members) who are next in priority sequence.

Proposed PCX Rule 6.75(f)(4)(D) provides that LMMs may direct some or all of their guaranteed participation to competing public orders in the trading crowd pursuant to PCX Rule 6.82(d).

Proposed PCX Rule 6.75(f)(4)(E) provides that bid and offering prices that are disseminated by an automatic quotation system are presumed to be the bid and offering prices of the LMM for purposes of PCX Rule 6.86 ("Firm Quotes") and PCX Rule 6.82(d)(2) ("Guaranteed Participation"). Nevertheless, LMMs must vocalize all of their bids and offers in response to a call for a market and in acceptance of another member's bid or offer. If a Floor Broker enters the trading crowd and vocalizes acceptance of a bid or offer that is then being disseminated, the LMM will be entitled to guaranteed participation on that transaction.

3. Parity Due to Simultaneous Bidding or Offering

Proposed PCX Rule 6.75(f)(5)(A) states that if the bids or offers of more than

one member are made simultaneously, such bids or offers will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis, pursuant to PCX Rule 6.75(c). Accordingly, the proposed rule change states that efforts will be made to assure that each member on parity receives an equal number of contracts, to the extent mathematically possible. One or more members on parity may waive their rights to some of their share (or shares) of contracts, but only to the extent that doing so is permissible under PCX Rule 6.86 ("Firm Quotes"). In such circumstances, the remaining number of contracts will be allocated, to the extent practicable, on an equal basis. However, an LMM who has received guaranteed participation on a transaction may not participate in the waived portion of the order unless there are contracts remaining to be allocated after all other members have been satisfied.

Proposed PCX Rule 6.75(f)(5)(B) provides that if the bids and offers of more than one member, including the LMM, are on parity, then the LMM's guaranteed participation will first be applied to the entire order and the remainder of the order will be allocated, to the extent practicable, on an equal basis among the members other than the LMM who are on parity. The LMM may participate in such remainder of the order only if there are contracts remaining after all members other than the LMM have first been satisfied.

Proposed PCX Rule 6.75(f)(5)(C) states that if the LMM waives priority or guaranteed participation when the LMM and one or more other members are on parity, then the portion of the order that the LMM has waived will be made available to the other members who are on parity.

4. Size Pro Rata Allocations (Collective Response Situations)

Proposed Rule 6.75(f)(6) states that if the members of the trading crowd provide a collective response to a member's request for a market in order to fill a large order, pursuant to PCX Rule 6.37(f)(2), then if the size of the trading crowd's market, in the aggregate, is less than or equal to the size of the order to be filled, the members of the trading crowd will each receive a share of the order that is equal to the size of their respective bids or offers. However, if the size of the trading crowd's market exceeds the size of the order to be filled, that order will be allocated on a size rata basis, with the members of the trading crowd each receiving, to the extent practicable, the percentage of the order that is the ratio of the size of their

respective bids or offers to the total size of all bids or offers.

d. Procedures of Lead Market Makers

PCX Rule 6.82(d)(2) currently provides, in part, that LMMs at their own discretion may direct their guaranteed participation to competing public orders in the crowd. The Exchange is proposing to modify this provision to provide that LMMs may direct "some or all" of their guaranteed participation to competing public orders (i.e., competing orders for the accounts of non-broker-dealers) in the crowd.

PCX Rule 6.82(d)(2) currently provides, in part, that LMMs "shall be allocated 50% participation in transactions occurring at their disseminated bids and/or offers in their allocated issue(s)." The Exchange is proposing to amend this rule so that it provides that LMMs "shall be allocated 50% participation (or such lesser percentage as the Options Allocation Committee may establish in allocating an issue to an LMM) in transactions occurring at their disseminated bids and/or offers in their allocated issues."

Finally, PCX Rule 6.82(e)(2)(a) currently provides, in part, that LMMs "shall have a right to participate pro rata with the trading crowd in trades that take place at the LMM's principal bid or offer." The Exchange is proposing to modify this provision to state that LMMs "have a right to participate with the trading crowd in trades that take place at the LMM's principal bid or offer, pursuant to the priority rule set forth in PCX Rule 6.75."

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.⁵ For the reasons discussed below, 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. Specifically, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.⁶

⁵ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed provision concerning "Obligations of Market Makers," which prohibits agreements among Market Makers with respect to the allocation of trades, should help to preclude anti-competitive conduct and prevent fraudulent and manipulative acts and practices.

The Commission believes further that the proposed provision concerning "Simultaneous Bids and Offers" fills a significant gap in the Exchange's current rules by setting forth the method for allocating an order among market participants in situations when their competing bids or offers are made simultaneously, or when the sequence in which their bids or offers were made cannot be clearly determined. In the Commission's view, the proposed rule change establishes a fair and equitable manner of apportioning an order in these situations by providing that the bids or offers will be deemed to be an parity, so that each maker receives, as far as practicable, an equal share of the order.

With respect to "Order Allocation Procedures," the Commission believes that the proposed rule change provides an important clarification by specifying the market participant with responsibility for determining the time priority sequence of bids and offers vocalized on the Trading Floor in response to a bid, offer, or call for a market. As discussed above, the proposed rule change assigns this duty to the Floor Broker, the Order Book Official, or Market Maker to whose bid, offer, or call for a market the participants responded. The Commission believes that this is a reasonable method of assigning responsibility for allocating a trade, particularly because the market participant who initiated the bid, offer, or call for a market is the best position to determine the identity and sequence of who responded.

The Commission notes that the proposal also provides for the resolution of disputes regarding the determination of time priority sequence, which should contribute to fair allocation of orders. The PCX also has represented that it has the ability to determine the identity of the individual who allocated a particular trade,⁷ and the Commission believes that the ability to identify such individuals is important to the Exchange's ability to monitor for violation of Exchange allocation rules.

The Commission notes that the provisions of the proposed rule change concerning the "LMM Guaranteed

Participation" provide a more specific description of how this guaranteed participation is to be applied than that provided in the PCX's current rules. Among other things, the proposal specifies that the LMM Guaranteed Participation applies only to the number of contracts remaining after all customer orders in the limit order book have first been satisfied. Although PCX Rule 6.82(d)(2) already provides that public order placed in the book take priority over the LMM guarantee, the Commission believes that the new provision is an important clarification of the Exchange's rules regarding application of the LMM guarantee.

Existing PCX Rule 6.82(d)(2) provides that the LMM Guaranteed Participation applies in "transaction occurring at the [LMMs'] disseminated bids and/or offers." The proposal fills in a significant gap in the Exchange's current rules, in the Commission's view, by clarifying that prices disseminated by an automatic quotation system are presumed to be the prices of the LMM so as to qualify the LMM for the Guaranteed Participation. The proposed rule change also establishes that the prices disseminated by an automatic quotation system are presumed to be the bid and offer of the LMM for purposes of PCX Rule 6.86 on "Firm Quotes."⁸ The proposal further states that LMMs must nevertheless vocalize all their bids or offers in response to a call for a market or in acceptance of a bid or offer that is being disseminated. In the Commission's view, this requirement is appropriate to harmonize the proposed rule change with the PCX's other rules on vocalization.

The Commission also believes that it is reasonable to permit members and LMMs to waive all or some of their share of contracts, as provided in the proposed provisions concerning "Parity Due to Simultaneous Bidding or Offering," consistent with the PCX's rule on firm quote obligations. The Commission further believes that it is fair and equitable to allocate such waived contracts among the other members on parity on an equal basis, to

the extent practicable, as the proposed rule change provides.⁹

The Commission notes that, as made clear by the proposal, an LMM who has received a guaranteed participation may not participate in the waived portion of an order unless there are remaining contracts to be allocated after all other members have been satisfied. Similarly, the proposed rule change clarifies generally that when one or more members are on parity with the LMM, after the LMM receives its Guaranteed Participation, the LMM is not entitled to a share in the remainder of the order with the other members unless all such other members have been satisfied. The Commission believes that these provisions will help assure fair allocation of orders and maintain a competitive environment on the Exchange.

As detailed above, the proposed rule change also clarifies how orders are allocated in the situation where members of the trading crowd provide a collective response to a member's request for a market in order to fill a large order pursuant to PCX Rule 6.37(f)(2).¹⁰ In the Commission's view, allocating participating members their respective sizes when their aggregate size is less than or equal to the size of the order, and allocating them their shares on a pro rata basis when their aggregate size exceeds the size of the order, is a reasonable way to apportion participation in such trades.

With respect to "Procedures of Lead Market Makers," the Commission believes that it is reasonable to amend PCX Rule 6.82(d)(2) to give the Options Allocation Committee the ability to reduce the LMM Guaranteed Participation percentage from the maximum permitted under PCX Rule 6.82(d) when it allocates an issue to an LMM. The Commission notes that subparagraphs (A) and (B) of Rule 6.82(d)(2) already permit the Committee to reduce the LMM guarantee under certain conditions.

The additional amendment clarifying that an LMM may direct *some* of its participation to a public order in the crowd—not just all of it, as the current rules implies—is reasonable, in the

⁸ The Commission notes that PCX Rule 6.86 provides that "with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the Lead Market Maker and any registered Market Makers constituting the trading crowd in such option series will collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified." Accordingly, if the Exchange's quotation is established by an automatic quotation system, such quotation is the quotation of all members of the crowd.

⁹ The Commission notes that the proposed rules on the LMM Guaranteed Participation provide that if the LMM waives some of that participation, the contracts will become available to the members who are next in the priority sequence. The Commission believes this, too, is a reasonable allocation method that conforms with the time priority principles reflected elsewhere in the PCX's rules.

¹⁰ See Securities Exchange Act Release No. 45578 (March 15, 2002), 67 FR 13393 (March 22, 2002) (SR-PCX-2001-50).

⁷ See Notice, *supra* note 3, at n.6.

Commission's view, as it conforms with the original purpose of this provision.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that proposed rule change (SR-PCX-2002-13) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12985 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45931; File No. SR-Phlx-2001-35]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change, As Amended By Amendment Nos. 1, 2, 3, 4, and 5 Thereto, Relating To Providing Automatic Executions For Public Customer Orders When Another Market Is Disseminating Quotes Deemed Not To Be Reliable

May 15, 2002.

I. Introduction

On March 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 change³ relating to providing automatic executions for public customer orders at the national best bid or offer ("NBBO"). On September 19, 2001, January 11, 2002, March 1, 2002, March 8, 2002,

and April 3, 2002, Phlx submitted Amendment Nos. 1,⁴ 2,⁵ 3,⁶ 4,⁷ and 5,⁸ respectively. The proposed rule change, as amended by Amendment Nos. 1, 2, 3, 4, and 5, was published for comment in the **Federal Register** on April 15, 2002.⁹ The Commission received no comments on the amended proposal. This order approves the proposed rule change, as amended by Amendment Nos. 1, 2, 3, 4, and 5.

II. Description of the Proposal

The Phlx proposes to permit the Exchange to exclude from the calculation of the NBBO certain quotes from other markets that are deemed not to be reliable.¹⁰ Upon the request of a specialist, the Chairman of the Options Committee or his designee¹¹ (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) would be authorized to determine that quotes in specified options or series of options or in respect of specified markets are not reliable under any of the following circumstances: notification from another market that its quotes are not firm or are

unreliable; administrative message from OPRA indicating that another market's quotes are unreliable; 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.

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 would maintain these documents pursuant to the record retention requirements of the Act and the rules and regulations thereunder.¹⁴ 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 to determine that quotes in options on the Exchange or other markets previously deemed not to be reliable are again reliable, and 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 indicating that another market's quotes are no longer unreliable; and/or telephonic or electronic inquiry to, and verification from, another market

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Phlx (as well as the other floor-based options exchanges) to adopt new, or amend existing, exchange rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automatic execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

⁴ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 18, 2001 ("Amendment No. 1").

⁵ 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 See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 3").

⁷ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 4").

⁸ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2002 ("Amendment No. 5").

⁹ See Securities Exchange Act Release No. 45713 (April 9, 2002), 67 FR 18292 (April 15, 2002).

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 Step-Up Feature." The NBBO Step-Up Feature would execute AUTO-X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Step-Up Feature, called "automatic step-up options." See Exchange Rule 1080(c)(i). This proposal would apply to all situations in which the NBBO Step-Up Feature was not engaged. The Commission, in a separate order, is approving a related proposed rule change regarding the exclusion of certain quotes from the Phlx's calculation of the NBBO when the NBBO Step-Up Feature is engaged. See Securities Exchange Act Release No. 45932 (May 15, 2002) (File No. SR-Phlx-00-93).

¹¹ Such designee must be a member of the Options Committee.

¹² See Amendment No. 3, *supra* note 6.

¹³ See Amendment No. 4, *supra* note 7.

¹⁴ See Amendment No. 5, *supra* note 8.

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.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendment Nos. 2, 3, 4, and 5, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹⁵ and, in particular, the requirements of Section 6 of the Act¹⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁷ because it provides objective criteria and well-defined procedures for excluding another market's quote from the Phlx's determination of the NBBO, which should increase the likelihood that Phlx's NBBO will more accurately reflect the actual state of the market at a given time. Specifically, the Commission notes that the determination of 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 exclude unreliable quotes is limited to circumstances in which the away market has either directly communicated or confirmed that its quotes are unreliable. In this way, the discretion afforded to Phlx officials to determine that another market's options quotes are unreliable is appropriately limited. Moreover, the record keeping requirements and other proposed procedures are not unreasonable.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Phlx-2001-35), as amended by Amendment Nos. 1, 2, 3, 4, and 5, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-12894 Filed 5-22-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45932; File No. SR-Phlx-00-93]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to that Portion of Proposed Rule Change Not Previously Granted Accelerated Approval, as Amended by Amendment Nos. 4, 5, 6, and 7 thereto, Relating to Providing Automatic Executions for Public Customer Orders at the NBBO

May 15, 2002.

I. Introduction

On September 18, 2001, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² Amendment Nos. 3,³ 4,⁴ 5,⁵ 6,⁶ and 7,⁷ respectively, to a proposed rule change⁸ relating to providing automatic executions for public customer orders at the national best bid or offer ("NBBO"). The Commission published for comment the

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 Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 18, 2001 ("Amendment No. 3").

⁴ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 15, 2002 ("Amendment No. 4). Amendment No. 4 superseded and replaced Amendment No. 3 in its entirety.

⁵ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 5").

⁶ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 6").

⁷ See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2002 ("Amendment No. 7").

⁸ The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Phlx (as well as the other floor-based options exchanges) to adopt new, or amend existing, exchange rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automatic execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

proposed rule change, along with Amendment Nos. 1 and 2, in the **Federal Register** on December 14, 2000,⁹ and granted partial accelerated approval to those portions of the proposed rule change and Amendment Nos. 1 and 2 relating to the automatic execution of eligible orders at the NBBO, provided that the NBBO is not better than the specialist's best bid or offer ("BBO") by a predetermined "step-up parameter." Amendment Nos. 4, 5, 6, and 7, were published for comment in the **Federal Register** on April 15, 2002.¹⁰ The Commission received no comments on Amendment Nos. 4, 5, 6, and 7. This order approves that portion of the proposed rule change not previously granted accelerated approval, as amended by Amendment Nos. 4, 5, 6, and 7.

II. Description of the Proposal

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."¹¹ This enhancement is known as the "NBBO Step-Up Feature." 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 the NBBO Step-Up Feature was activated and 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

⁹ See Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 (December 14, 2000) ("Original Filing"). The Commission received one comment letter on the Original Filing. 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. 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 Phlx's calculation of the National Best Bid or Offer ("NBBO") 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.

¹⁰ See Securities Exchange Act Release No. 45757 (April 9, 2002), 67 FR 19605 (April 15, 2002).

¹¹ For a full discussion of Phlx's proposal, see the Original Filing.

¹⁵ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ *Id.*

¹⁹ 17 CFR 200.30-3(a)(12).

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. The Commission did not approve this part of the Original Filing and the Phlx subsequently filed Amendment Nos. 3, 4, 5, 6, and 7 with the Commission.¹²

In Amendment No. 4, the Phlx proposed to limit the factors that the Chairman of the Options Committee or his designee¹³ (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 could 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") indicating that another market's quotes are unreliable; 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.¹⁶

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 Rule¹⁷ 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 indicating that another market's quotes are no longer unreliable; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm.¹⁸ AUTOM customers would be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.¹⁹

In Amendment No. 5, the Exchange: (1) Clarified that pursuant to the proposed rule change it would be permitted to determine to exclude quotes from its calculation of the NBBO on a series-by-series basis or class-by-class basis, or to 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 would 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.²⁰

In Amendment No. 6, the Phlx proposed 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.²¹

In Amendment No. 7, the Phlx 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 would 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 would maintain these documents pursuant to the record retention requirements of the Act and the rules and regulations thereunder.²²

III. Discussion

After careful review, the Commission finds that the portion of the proposed rule change not previously granted accelerated approval, as amended by Amendment Nos. 4, 5, 6, and 7, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange²³ and, in particular, the requirements of Section 6 of the Act²⁴ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁵ because it provides objective criteria and well-defined procedures for excluding another market's quote from the Phlx's determination of the NBBO, which should increase the likelihood that Phlx's NBBO will more accurately reflect the actual state of the market at a given time. Specifically, the Commission notes that the determination of 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 exclude unreliable quotes is limited to circumstances in which the away market has either directly communicated or confirmed that its quotes are unreliable. In this way, the discretion afforded to Phlx officials to determine that another market's options quotes are unreliable is appropriately limited. Moreover, the record keeping requirements and other proposed procedures are not unreasonable.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the portion of the proposed rule change not previously granted accelerated approval (SR-Phlx-00-93), as amended by Amendment Nos. 4, 5, 6, and 7, is approved.

²² See Amendment No. 7, *supra* note 6.

²³ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ *Id.*

¹² This proposal would apply to all situations in which the NBBO Step-Up Feature was engaged. The Commission, in a separate order, is approving a related proposed rule change regarding the exclusion of certain quotes from the Phlx's calculation of the NBBO when the NBBO Step-Up Feature is not engaged. See Securities Exchange Act Release No. 45931 (May 15, 2002) (File No. SR-Phlx-2001-35).

¹³ Such designee must be a member of the Options Committee.

¹⁴ See Amendment No. 4, *supra* note 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Amendment No. 5, *supra* note 4.

²¹ See Amendment No. 6, *supra* note 5.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12896 Filed 5-22-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45927; File No. SR-Phlx-2001-24]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 4 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Manual Handling of Certain AUTOM Orders by Specialists

May 15, 2002.

On March 2, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² relating to the manual handling of certain Exchange Automated Options Market ("AUTOM") orders by Exchange specialists.³ The Phlx filed Amendment

Nos. 1,⁴ 2,⁵ 3,⁶ and 4⁷ to the proposed rule change, respectively. The proposed rule change, as amended, was published for public comment in the **Federal Register** on February 20, 2002.⁸ The Commission received no comments on the proposal. On May 15, 2002, the Phlx filed Amendment No. 5 to the proposed rule change.⁹ This order approves the proposed rule change, as amended.

I. Description of the Proposal

The Phlx proposes to adopt Phlx Rule 1080(c)(iv) to codify that an options order otherwise eligible for the Exchange's Automated Execution System ("AUTO-X") will instead be manually handled by the specialist in

⁴ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 12, 2001 ("Amendment No. 1"). Amendment No. 1 designates the proposed rule change as filed pursuant Section 19(b)(2) of the Act, and the Exchange requests that the proposed rule change is given accelerated effectiveness. 15 U.S.C. 78s(b)(2).

⁵ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 2, 2001 ("Amendment No. 2"). Amendment No. 2 corrects technical errors to the proposed rule text.

⁶ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 7, 2001 ("Amendment No. 3"). Amendment No. 3 updates the proposed rule text that refers to a pilot program that permits the Exchange to automatically execute option contracts within a 15 second period. In addition, Amendment No. 3 corrects technical errors to the proposed rule text.

⁷ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 10, 2001 ("Amendment No. 4"). Amendment No. 4 replaces the original filing in its entirety and modifies earlier revisions by: (1) Clarifying the calculation of a zero bid by the Exchange's Autoquote System; (2) clarifying the Exchange's audit trail and other documentation in cases which AUTO-X is disengaged; (3) clarifying the authority of the Exchange's Options Committee to restrict the use of AUTO-X on the Exchange; and (4) updating the proposed rule text that refers to the pilot program that permits the Exchange to automatically execute option contracts within a 15 second period.

⁸ See Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728.

⁹ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 14, 2002 ("Amendment No. 5"). Amendment No. 5: (1) Deletes references in the purpose section of the proposed rule change regarding the AUTO-X Disengagement Log, which does not apply to the nine codified circumstances under which an incoming order would be manually handled by an Exchange specialist; (2) amends proposed rule text to provide that any restriction by the Options Committee on the use of Auto-X will be clearly communicated to its membership and users of the Exchange's Automated Options Market ("AUTOM") via an electronic message and an information circular; and (3) amends the proposed rule text to provide that, to the extent one of the nine codified circumstances under proposed Phlx Rule 1080(c)(iv) occur, the Exchange's AUTO-X system has the ability to identify inbound orders that are not eligible for automatic execution.

certain circumstances. The Exchange also proposes to cross-reference Phlx Rule 1080(c)(i), "AUTO-X on the NBBO (NBBO Feature)," in cases in which AUTO-X will not execute at the Exchange's disseminated quotation.

Currently, Phlx Rule 1080 governs the operation of AUTOM and AUTO-X. AUTO-X is addressed primarily in Phlx Rule 1080(c), which provides that only certain order types are eligible for AUTO-X. Phlx Rule 1080(c) also provides that 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.

According to the Phlx, AUTO-X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. In all other circumstances, AUTOM orders that are not eligible for AUTO-X would be executed manually in accordance with Exchange rules. Phlx Rule 1080 currently enumerates some of the situations where an order may not be automatically executed.

The Phlx proposes to codify nine additional situations in which an otherwise AUTO-X eligible order would not automatically execute. The first case is when the Exchange's disseminated market crosses or locks the disseminated market of another options exchange. Second, stop, stop limit, market on closing, market on opening, and all-or-none orders do not automatically execute because these orders consist of contingencies, such as price, time, or size that the AUTOM system cannot address. Third, pre-market orders received when the AUTOM system is not open for trading are not eligible for automatic execution. Fourth, when the disseminated market is produced during an opening or other rotation, incoming orders will not automatically execute.¹⁰ Fifth, when the specialist posts a bid or offer that is better than the specialist's own bid or offer, incoming orders will not automatically execute.¹¹ Sixth, because certain options are subject to the NBBO Feature, as described in Phlx Rule 1080(c)(i), when the NBBO Feature is

¹⁰ The Phlx notes that AUTO-X is engaged promptly after an option's opening, once there is an established price against which an automatic execution can occur.

¹¹ According to the Phlx, the bid or offer could represent a customer order or a price-improving bid or offer by a Registered Options Trader ("ROT").

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Phlx (as well as the other floor-based options exchanges) to adopt new, or amend existing rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automated execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

not engaged and the Exchange's bid or offer is not the NBBO, incoming AUTOM orders will not automatically execute.¹² Seventh, when the price of a limit order is not in the appropriate minimum trading increment pursuant to Phlx Rule 1034, the order will not automatically execute. Eighth, an incoming AUTOM sell order would not automatically execute if the bid price for a particular option series is zero.¹³ Lastly, the Phlx represents that certain options are subject to a pilot program which provides that when the number of contracts automatically executed within a 15 second period exceeds the AUTO-X guarantee, a 30 second period ensues during which subsequent orders are handled manually.¹⁴

In any of these situations, the Phlx would disseminate a message to its quotation vendors that indicates to users on a series-by-series basis, whether or not such series is AUTO-X eligible. In addition to the nine aforementioned situations in which an order may not automatically execute, Phlx Rule 1080 provides that the Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series.¹⁵ The Phlx proposes that any restriction on the use of AUTO-X on the Exchange in any option or series approved by the Options Committee would be clearly communicated to its membership and AUTOM users through an electronic message via AUTOM, and through an Exchange information

circular. The Phlx also proposes that such restriction would not take effect until after such communication has been made.

Because in the nine proposed circumstances that an Exchange specialist would manually execute an incoming AUTOM order, the AUTO-X system will not be disengaged,¹⁶ in Amendment No. 5,¹⁷ the Phlx proposes to delete references to the AUTO-X disengagement log, which records every situation in which AUTO-X is disengaged. Instead, the Exchange's systems would be able to determine that the otherwise AUTO-X eligible order cannot automatically execute because of the existence of one of the nine aforementioned circumstances. As a result, an Exchange specialist would manually execute the order. Further, Amendment No. 5 clarifies in the proposed rule text that the Options Committee will clearly communicate to its membership and AUTOM users through an electronic message via AUTOM and an Exchange information circular, any restrictions to the use of AUTO-X in any option or series approved by the Options Committee. Amendment No. 5 also clarifies in the proposed rule text that, to the extent one of the nine codified circumstances under proposed Phlx Rule 1080(c)(iv) occurs, the Exchange's systems are able to identify inbound orders that were not eligible for automatic execution.

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act, and the rules and regulations thereunder, applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁹ which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

The Commission finds that the proposal is consistent with the Act because, by codifying the situations in which an otherwise eligible AUTO-X order is handled manually by the specialist, it enhances the transparency

of the operation of the Phlx market, to the benefit of all market participants, including investors.

Specifically, the Phlx codifies nine particular instances in which Exchange specialists would handle incoming AUTOM orders manually. The Exchange disseminates a message to its quotation vendors that indicates to a user on a series-by-series basis, whether or not such series is AUTO-X eligible. The Phlx rules also provide for the Options Committee to restrict for any period the use of AUTO-X on the Exchange in any option or series. The Commission notes that any restriction on the use of AUTO-X in any option or series approved by the Options Committee will be clearly communicated to its membership and AUTOM users through an electronic message via AUTOM, and through an Exchange information circular. Such restriction would not take effect until after such communication has been made. The Commission believes that this provision should provide Phlx members and AUTOM users with adequate notice of any changes to the availability of AUTO-X in any option or series. The Commission also notes that Exchange systems dictate, and Exchange specialists do not have discretion over, which otherwise AUTO-X eligible orders are manually handled. The Commission finds good cause for approving Amendment No. 5 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. In addition to deleting inapplicable language regarding the AUTO-X disengagement log, an internal electronic audit trail system that records every situation in which AUTO-X is disengaged, Amendment No. 5 clarifies the proposed rule text in response to concerns of Commission staff. The Commission believes Amendment No. 5 is consistent with Section 6(b)(5) of the Act,²⁰ and therefore the approval of Amendment No. 5 on an accelerated basis is appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5, including whether the proposed 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

¹² The Phlx represents that certain options are subject to the NBBO Feature, which automatically executes eligible orders at the National Best Bid or Offer ("NBBO") provided that the NBBO does not differ from the specialist's best bid or offer by more than the "step-up parameter," which is determined by the Options Committee. See Phlx Rule 1080(c)(i). According to the Phlx, participation on an option-by-option basis in the NBBO Feature is voluntary. If the specialist elects not to engage the NBBO Feature, or disengages it pursuant to the Exchange rule, and the Exchange's disseminated bid or offer is inferior to the NBBO, an incoming AUTOM order would not automatically execute. Thus, to prevent AUTO-X from creating a trade-through, such an order would be handled manually.

¹³ According to the Phlx, a "zero" bid price is typically calculated by Auto-Quote, the Exchange's automatic pricing system, when an option that is well out-of-the-money approaches expiration, and thus has neither intrinsic value nor time value. In such circumstance, as stated above, an incoming order to sell would not be AUTO-X eligible, since an automatic execution is not possible at a "zero" bid.

¹⁴ See Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR-Phlx-2002-22).

¹⁵ See Phlx Rule 1080(c). The Commission has also approved Phlx's proposal to provide in Phlx Rule 1080(c) that the effectiveness of restrictions to the use of AUTO-X 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. See Securities Exchange Act Release No. 45928 (May 15, 2002) (SR-Phlx-2001-27).

¹⁶ Telephone conversation among Richard S. Rudolph, Counsel, Phlx, and Deborah Lassman Flynn, Assistant Director, and Lisa Jones, Attorney, Division, Commission (May 8, 2002).

¹⁷ See note 8, *supra*.

¹⁸ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78f(b)(5).

with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the amendment 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-24 and should be submitted by June 13, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-Phlx-2001-24), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority:²²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12898 Filed 5-22-02; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration,

409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: 25-Model Corp. Resol. or GP Certif., 33-Model Letter to Selling Agent. 34-Bank ID, 1085-Appl. Lic Assure of Compliance.

Form No: 2115, 2116, 2117.

Frequency: New Collection.

Description of Respondents:

Applicants for SBA-guaranteed leverage.

Annual Responses: 125.

Annual Burden: 110.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02-12883 Filed 5-22-02; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3415]

Commonwealth of Kentucky (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, dated May 10, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on April 27, 2002 and continuing through May 10, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 6, 2002, and for economic injury the deadline is February 7, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 15, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02-12882 Filed 5-22-02; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3409]

Commonwealth of Virginia (Amendment # 1)

In accordance with a notice received from the Federal Emergency Management Agency, dated May 15, 2002, the above numbered declaration is hereby amended to include Bedford, Campbell, Cumberland, Greensville, Prince Edward and Shenandoah Counties and the Independent City of Bedford in the Commonwealth of

Virginia as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on April 28, 2002 through May 3, 2002.

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 previously designated location: Amelia, Amherst, Appomattox, Botetourt, Brunswick, Buckingham, Charlotte, Dinwiddie, Fluvanna, Franklin, Frederick, Goochland, Halifax, Lunenburg, Nottoway, Page, Pittsylvania, Powhatan, Roanoke, Rockbridge, Rockingham, Southampton, Sussex and Warren Counties in Virginia; Northampton County in North Carolina; and Hardy County in West Virginia.

The economic injury number assigned to North Carolina is 9P7500.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 4, 2002, and for economic injury the deadline is February 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 16, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02-12881 Filed 5-22-02; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

1. *Application for Parent's Insurance Benefits—0960-0012*. The information collected on form SSA-7 is used by the Social Security Administration to determine entitlement of an individual to parent's social security insurance benefits. The respondents are parents who were dependent on the worker for at least one-half of their support.

Number of Respondents: 1,400.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 350 hours.

2. *The Census Bureau Survey of Income and Program Participation (SIPP) on Behalf of the Social Security Administration (SSA)—0960-NEW*. SSA has requested the Census Bureau to include in its SIPP interviews scheduled for January 2003 a sample of social security disabled insurance beneficiaries and supplemental security income recipients. SSA will use these data to conduct statistical research of recipients of SSA-administered programs. The *SIPP for SSA Beneficiaries* is a household-based survey molded around a central "core" of labor force and income questions. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as expenses related to work, health care, child support and real estate/dependent care. These supplemental questions are included with the core and are referred to as "topical modules."

The survey is currently scheduled for one month and will include approximately 1,000 households. We estimate that each household will average 2.1 people, yielding 2,100 interviews. Interviews take 30 minutes on average. The total burden for the *SIPP for SSA Beneficiaries* would be 1,050 hours.

The topical modules for the *SIPP for SSA Beneficiaries* collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)

- Work Related Expenses, Child Support Paid and Child Care Poverty
- Assets, Liabilities, and Eligibility
- Real Estate and Dependent Care

The survey interviews will be conducted from January 1, 2003 through January 31, 2003.

Number of Respondents: 2,100.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 1,050 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965-0454, or by writing to the address listed above.

1. *Application for Benefits Under a U.S. International Social Security Agreement—0960-0448*. The information collected on form SSA-2490 is used by SSA to determine a claimant's eligibility for U.S. Social Security benefits under the provisions of an international social security agreement. It is also used to take an application for benefits from a foreign country under an agreement. The respondents are individuals who are applying for benefits from either the United States and/or a foreign country with which the United States has an agreement. The United States currently has 17 such agreements.

Number of Respondents: 22,000.

Frequency of response: 1.

Average Burden per response: 30 minutes.

Estimated Annual Burden: 11,000 hours.

2. *Request for Workers' Compensation/Public Disability Information—0960-0098*. Form SSA-1709 is used by SSA to request and/or to verify information about worker's compensation or public disability benefits given to Social Security disability insurance benefit recipients so that their monthly benefit adjustments are properly made. The respondents are State and local governments and/or businesses that administer workers' compensation or other disability benefits.

Number of Respondents: 140,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 35,000 hours.

3. *Government Pension Questionnaire—0960-0160*. The Social

Security Act and Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefit amount reduced by two-thirds of the pension amount. The data collected on Form SSA-3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in SSA regulations applies. The respondents are individuals who are receiving (or will receive) Social Security spouse's benefits and also receive their own Government pension.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 12.5 minutes.

Estimated Annual Burden: 6,250 hours.

Dated: May 17, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02-12879 Filed 5-22-02; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 4024]

Foreign Service Institute; 60-Day Notice of Proposed Information Collection: Form DS-3083, Training Registration Form (for Non-U.S. Government Persons); OMB Control Number 1405-xxxx

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New collection.

Originating Office: Foreign Service Institute (M/FSI).

Title of Information Collection: Training Registration Form (for Non-U.S. Government Persons).

Frequency: Continuously (as needed for covered individuals to enroll in training courses provided by the Foreign Service Institute, Department of State).

Form Number: DS-3083.

Respondents: Respondents are non-U.S. Government persons and/or their eligible family members, authorized by Public Law 105-277 to receive training delivered by the Foreign Service Institute on a reimbursable or advance of funds basis.

Estimated Number of Respondents: Approximately 100 to 200 persons per year.

Average Hours Per Response: 0.5 hours (one-half hour).

Total Estimated Burden:

Approximately 50 to 100 hours/year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Wayne A. Oshima, who may be reached on (703) 302-6730.

Dated: April 29, 2002.

Catherine J. Russell,

Executive Director, Foreign Service Institute, Department of State.

[FR Doc. 02-12999 Filed 5-22-02; 8:45 am]

BILLING CODE 4710-34-P

DEPARTMENT OF STATE

[Public Notice 4027]

Bureau of Political-Military Affairs; 30-Day Notice of Information Collections

In the matter of: Form DS-2032, Statement of Registration (OMB No. 1405-0002); Form DSP-5, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data (OMB No. 1405-0003); Form DSP-61, Application/License for Temporary Import of Unclassified Defense Articles (OMB No. 1405-0013); Form DSP-73, Application/License for Temporary Export of Unclassified Defense Articles (OMB No. 1405-0023); Form DSP-85, Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data (OMB No. 1405-0022); Form DSP-83, Non-Transfer and Use Certificate (OMB No. 1405-0021); Statement of Political Contributions, Fees, or

Commissions in Connection with the Sale of Defense Articles or Services (OMB No. 1405-0025); Form DSP-119, Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data (OMB No. 1405-0092); Form DSP-94, Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program (OMB No. 1405-0051); Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements (OMB No. 1405-0093); Maintenance of Records by Registrants (OMB No. 1405-0111); Prior Approval for Brokering Activity (New Collection); and Brokering Activity Reports (New Collection).

ACTION: 30-Day Notice of Collections.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposals submitted to OMB:

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Statement of Registration.

Frequency: Every one to four years.

Form Number: DS-2032.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 2 hours.
Total Estimated Burden: 10,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

Frequency: On occasion.

Form Number: DSP-5.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 1 hour.
Total Estimated Burden: 30,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles.

Frequency: On occasion.

Form Number: DSP-61.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 1,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 500 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles.

Frequency: On occasion.

Form Number: DSP-73.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 2,500.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 2,500 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.

Frequency: On occasion.

Form Number: DSP-85.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 250.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 250 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Non-Transfer and Use Certificate.

Frequency: On occasion.

Form Number: DSP-83.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 17,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services.

Frequency: On occasion.

Form Number: none.

Respondents: Business organizations.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 12,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.

Frequency: On occasion.

Form Number: DSP-119.

Respondents: Business and non-profit organizations.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 4,500 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program.

Frequency: On occasion.

Form Number: DSP-94.

Respondents: Business and foreign government representatives.

Estimated Number of Respondents: 2,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,250 hours. (Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements.

Frequency: On occasion.

Form Number: none.

Respondents: Business organizations.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 10,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Type of Request: Extension of Currently Approved Collection Without Change.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Maintenance of Records by Registrants.

Frequency: On occasion.

Form Number: none.

Respondents: Business organizations.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 20 hours per year.

Total Estimated Burden: 100,000 hours.

Type of Request: New Collection.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Prior Approval for Brokering Activity.

Frequency: On occasion.

Form Number: none.

Respondents: Business organizations.

Estimated Number of Respondents: 30.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 60 hours. (Total Estimated Burden based on number of requests received per year.)

Type of Request: New Collection.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Brokering Activity Reports.

Frequency: Annual.

Form Number: none.

Respondents: Business organizations.

Estimated Number of Respondents: 500.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 1,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate 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.

- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Copies of the proposed information collection and supporting documents may be obtained from William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, SA-1, Room 12th Floor, H1200, 2401 E Street, NW., Washington, DC 20522-0112 (202) 663-7000. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395-3897.

Dated: March 20, 2002.

Robert W. Maggi,

Acting Deputy Assistant Secretary for Security Operations, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 02-13000 Filed 5-22-02; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF STATE

[Public Notice 4029]

Culturally Significant Objects Imported for Exhibition Determinations: "Michael Sweerts (1618-1664)"

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and

Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that certain of the objects to be included in the exhibition "Michael Sweerts (1618–1664)," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of these exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about June 15, 2002, to on or about August 25, 2002, at the Wadsworth Atheneum Museum of Art, Hartford, CT, from on or about September 19, 2002, to on or about December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 16, 2002.

Stephen T. Hart,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–13002 Filed 5–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Party War Risk Liability Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from May 19, 2002 through June 18, 2002.

FURTHER INFORMATION: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW, Washington,

DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at FAA Insurance Website: <http://api.hq.faa.gov/911policies/inscover.html>.

SUPPLEMENTARY INFORMATION: On May 14, 2002, the Secretary of Transportation authorized a 30-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

MEMORANDUM TO THE PRESIDENT

"Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 30 days.

Pursuant to section 44306(c) of chapter 443 of 49 U.S.C.—Aviation Insurance, the period for provision of insurance shall be extended from May 20, 2002, through June 18, 2002."

/s/ Norman Y. Mineta.

Affected Public: Air Carriers who currently have Third Party War-Risk Liability Insurance with the Federal Aviation Administration.

Issued in Washington, DC on May 20, 2002.

Nan Shellabarger,

Deputy Director, Office of Aviation Policy and Plans.

[FR Doc. 02–13004 Filed 5–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34200]

PSAP Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.

PSAP Operating Company, Inc. (PSAP), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 153.3 miles of rail lines in Washington. Specifically, PSAP will acquire and operate: (1) 83.5 miles of rail lines of ParkSierra Corporation (ParkSierra) ¹

¹ On January 8, 2002, RailAmerica, Inc. (RailAmerica), acquired control of ParkSierra. See *RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.*, STB Finance Docket No. 34100 (STB served Dec. 20, 2001). ParkSierra has three operating divisions: Arizona & California Railroad Company Limited Partnership; California Northern Railroad Company, L.P.; and Puget Sound & Pacific Railroad. RailAmerica has determined that the three operating divisions of ParkSierra should be operated as separate corporations, eliminating the need for ParkSierra as a consolidated holding company. To accomplish that goal, this transaction

consisting of (a) the Centralia-Hoquiam Line, between milepost 0.6 at Centralia, and milepost 74.1 at Hoquiam, including the Horn Spur Track, which connects to the Centralia-Hoquiam Line at milepost 72.5 and extends northward to the end of the track at approximately milepost 2.0, and (b) the Elma-Shelton Line, between milepost 0.0 (connecting to the Centralia-Hoquiam Line at about milepost 46.7) at Elma, and milepost 25.1 at Shelton; (2) approximately 58.0 miles of ParkSierra's trackage rights (a) over Union Pacific Railroad Company's (UP) line between milepost 68.9 and milepost 69.4, and milepost 70.3 and milepost 72.0, near Aberdeen, a distance of about 2.2 miles, (b) over The Burlington Northern and Santa Fe Railway Company's (BNSF) line between milepost 0.6 and milepost 0.4, at or near Centralia, a distance of about 0.2 miles, (c) under a December 11, 1994 agreement with the United States of America, to provide service on a government-owned line from its connection with the Elma-Shelton Line to Bangor, a distance of approximately 44 miles, and a branch line to Bremerton Navy Yard, a distance of approximately 4.6 miles, and (d) over The City of Tacoma d/b/a Tacoma Rail's (TR) lines between Lakeside Siding near Blakeslee Junction, milepost 60.0, southwest six miles and the interchange with BNSF at Chehalis, milepost 66.0 (the TR/BNSF Interchange), and from the TR/BNSF Interchange one mile to milepost 67.0, where TR's rail lines connect with rail line owned by the Port of Chehalis, for a total distance of approximately 7.0 miles; (3) approximately 1.8 miles of line under ParkSierra's lease with UP from UP milepost 53.83 to UP milepost 54.23, and from UP milepost 55.28 to UP milepost 56.70, in Aberdeen and Hoquiam Counties; and (4) a 10-mile line under a modified certificate of public convenience and necessity between milepost 0.0 at Chehalis, and milepost 10.0 at Curtis.

and two other notices of exemption under 49 CFR 1150.31 were filed on April 23, 2002, one for each of the operating divisions. The applicants are: ARZC Operating Company, Inc. (ARZC); CFNR Operating Company, Inc. (CFNR); and PSAP. The related proceedings are: STB Finance Docket No. 34198, *ARZC Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.*, and STB Finance Docket No. 34199, *CFNR Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.* In addition, a notice of exemption under 49 CFR 1180.2(d)(3) was filed on April 23, 2002, in STB Finance Docket No. 34197, *RailAmerica, Inc., et al.—Corporate Family Reorganization Exemption*, wherein ParkSierra will be merged into CFNR, and ARZC, CFNR, and PSAP will become direct railroad subsidiaries of RailAmerica.

Once PSAP becomes a carrier, its revenues are expected to exceed \$5 million per year. "If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so." 49 CFR 1150.32(e). PSAP filed a request on April 22, 2002, for waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption to become effective without providing the 60-day advance notice. Finding no adverse impact on the personnel of ParkSierra, by decision served on May 14, 2002, the Board granted PSAP's request and waived the requirements of 49 CFR 1150.32(e). The transaction was expected to be consummated as of April 30, 2002, or the date the related waiver request was granted, whichever was later. The waiver decision had the effect of making the exemption in this proceeding effective on May 14, 2002.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34200 must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: May 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-12995 Filed 5-22-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34198]

ARZC Operating Company, Inc.— Acquisition and Operation Exemption—ParkSierra Corp.

ARZC Operating Company, Inc. (ARZC), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 300 miles of rail lines in California and Arizona. Specifically, ARZC will acquire and operate: (1) Rail lines of ParkSierra Corporation (ParkSierra) ¹ (a) between, milepost 190.18 at Cadiz, CA, and milepost 105.8 at Parker, AZ, (b) between milepost 105.8 at Parker and milepost 0.08 at Matthie, including "Y" Track Number 1 near milepost 134.92 near Matthie, and (c) between milepost 0 at Rice, CA, and milepost 49.4 at Ripley, CA, at the end of the Ripley Subdivision, a distance of approximately 240 miles; and (2) ParkSierra's trackage rights over the lines of The Burlington Northern and Santa Fe Railway Company (BNSF) (a) between BNSF's Cadiz Subdivision milepost 190.18 and BNSF's Needles Subdivision milepost 647.99 on Track Nos. 2 and 36 at Cadiz, and (b) between BNSF's Parker Subdivision milepost 0.08 (also Phoenix Subdivision milepost 135.03) and BNSF's Phoenix Subdivision milepost 191.91, including all yard track in the Mobest Yard in Phoenix, AZ, a distance of approximately 60 miles.

¹ On January 8, 2002, RailAmerica, Inc. (RailAmerica), acquired control of ParkSierra. See *RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.*, STB Finance Docket No. 34100 (STB served Dec. 20, 2001). ParkSierra has three operating divisions: Arizona & California Railroad Company Limited Partnership; California Northern Railroad Company, L.P.; and Puget Sound & Pacific Railroad. RailAmerica has determined that the three operating divisions of ParkSierra should be operated as separate corporations, eliminating the need for ParkSierra as a consolidated holding company. To accomplish that goal, this transaction and two other notices of exemption under 49 CFR 1150.31 were filed on April 23, 2002, one for each of the operating divisions. The applicants are: ARZC; CFNR Operating Company, Inc. (CFNR); and PSAP Operating Company, Inc. (PSAP). The related proceedings are: STB Finance Docket No. 34199, *CFNR Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.*, and STB Finance Docket No. 34200, *PSAP Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.* In addition, a notice of exemption under 49 CFR 1180.2(d)(3) was filed on April 23, 2002, in STB Finance Docket No. 34197, *RailAmerica, Inc., et al.—Corporate Family Reorganization Exemption*, wherein ParkSierra will be merged into CFNR, and ARZC, CFNR, and PSAP will become direct railroad subsidiaries of RailAmerica.

Once ARZC becomes a carrier, its revenues are expected to exceed \$5 million per year. "If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so." 49 CFR 1150.32(e). ARZC filed a request on April 22, 2002, for waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption to become effective without providing the 60-day advance notice. Finding no adverse impact on the personnel of ParkSierra, by decision served on May 14, 2002, the Board granted ARZC's request and waived the requirements of 49 CFR 1150.32(e). The transaction was expected to be consummated as of April 30, 2002, or the date the related waiver request was granted, whichever was later. The waiver decision had the effect of making the exemption in this proceeding effective on May 14, 2002.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34198 must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: May 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-12997 Filed 5-22-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34199]

**CFNR Operating Company, Inc.—
Acquisition and Operation
Exemption—ParkSierra Corp.**

CFNR Operating Company, Inc. (CFNR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 248.5 miles of rail lines in California. Specifically, CFNR will: (1) Succeed to ParkSierra Corporation's (ParkSierra)¹ lease rights and operate over the lines owned by Union Pacific Railroad Company (UP) consisting of (a) the Schellville Branch, between Suisun, milepost 48.97 at the east leg of the wye and milepost 48.93 at the west leg of the wye, and milepost 63.40 at Lombard, (b) the Napa Branch, between milepost 62.00 at Lombard and milepost 67.50 at Rocktram, (c) the Vallejo Branch, between milepost 61.80 at Napa Jct., and milepost 68.90 at Vallejo, (d) the West Valley Line, between Davis, milepost 75.66 at the east leg of the wye and milepost 75.58 at the west leg of the wye, and Tehema, milepost 186.37 at the east leg of the wye toward Portland and milepost 186.33 at the west leg of the wye toward Roseville, (e) the Hamilton Branch, between milepost 180.40 at Wyo, and milepost 169.00 at Hamilton, (f) the Los Banos Branch, between milepost 83.00 at Tracy, and milepost 140.07 at Los Banos, and (g) the Vineburg Lead, between milepost NWP 40.38 near Schellville and the end

of the line, formerly NWP milepost 44.25, a distance of approximately 210 miles; and (2) acquire ParkSierra's right to operate under trackage rights (a) over a portion of UP's (i) Sacramento Line between milepost 75.4 at Davis, and milepost 47.8 at Suisun-Fairfield, (ii) West Valley Line between milepost 75.58 and milepost 75.4 at Davis, and (iii) Schellville Branch between milepost 48.97 and milepost 47.8, a distance of approximately 28 miles; and (b) over a line of the North Coast Railroad Authority from milepost 62.0, at or near Lombard to milepost 72.5, near Schellville, a distance of approximately 10.5 miles.

Once CFNR becomes a carrier, its revenues are expected to exceed \$5 million per year. "If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so." 49 CFR 1150.32(e). CFNR filed a request on April 22, 2002, for waiver of the requirements of 49 CFR 1150.32(e) to permit the exemption to become effective without providing the 60-day advance notice. Finding no adverse impact on the personnel of ParkSierra, by decision served on May 14, 2002, the Board granted CFNR's request and waived the requirements of 49 CFR 1150.32(e). The transaction was expected to be consummated as of April 30, 2002, or the date the related waiver request was granted, whichever was later. The waiver decision had the effect of making the exemption in this proceeding effective on May 14, 2002.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34199 must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must

be served on Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: May 16, 2002.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-12998 Filed 5-22-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34197]

**RailAmerica, Inc., ARZC Operating
Company, Inc., CFNR Operating
Company, Inc., and PSAP Operating
Company, Inc.—Corporate Family
Reorganization Exemption**

RailAmerica, Inc. (RailAmerica), and its subsidiaries, ARZC Operating Company, Inc. (ARZC), CFNR Operating Company, Inc. (CFNR), and PSAP Operating Company, Inc. (PSAP) (collectively, applicants), are making certain changes to their corporate structure and have filed a verified notice of the transaction under the Board's intracorporate family class exemption.¹

RailAmerica directly controls Palm Beach Rail Holding, Inc. (Palm Beach), which directly controls RailAmerica Transportation Corp. (RTC), which directly controls ParkSierra. RailAmerica and Palm Beach will continue to control RTC, which in turn

¹ On January 8, 2002, RailAmerica, Inc. (RailAmerica), acquired control of ParkSierra. See *RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.*, STB Finance Docket No. 34100 (STB served Dec. 20, 2001). ParkSierra has three operating divisions: Arizona & California Railroad Company Limited Partnership; California Northern Railroad Company, L.P.; and Puget Sound & Pacific Railroad. RailAmerica has determined that the three operating divisions of ParkSierra should be operated as separate corporations, eliminating the need for ParkSierra as a consolidated holding company. To accomplish that goal, this transaction and two other notices of exemption under 49 CFR 1150.31 were filed on April 23, 2002, one for each of the operating divisions. The applicants are: ARZC Operating Company, Inc. (ARZC), CFNR; and PSAP Operating Company, Inc. (PSAP). The related proceedings are: STB Finance Docket No. 34198, *ARZC Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.*, and STB Finance Docket No. 34200, *PSAP Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.* In addition, a notice of exemption under 49 CFR 1180.2(d)(3) was filed on April 23, 2002, in STB Finance Docket No. 34197, *RailAmerica, Inc., et al.—Corporate Family Reorganization Exemption*, wherein ParkSierra will be merged into CFNR, and ARZC, CFNR, and PSAP will become direct railroad subsidiaries of RailAmerica.

¹ On January 8, 2002, RailAmerica acquired control of ParkSierra Corporation (ParkSierra). See *RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.*, STB Finance Docket No. 34100 (STB served Dec. 20, 2001). ParkSierra has three operating divisions: Arizona & California Railroad Company Limited Partnership; California Northern Railroad Company, L.P.; and Puget Sound & Pacific Railroad. RailAmerica has determined that the three operating divisions of ParkSierra should be operated as separate corporations, eliminating the need for ParkSierra as a consolidated holding company. To accomplish that goal, this transaction and three notices of exemption under 49 CFR 1150.31 were filed on April 23, 2002, one for each of the operating divisions. The applicants are ARZC, CFNR, and PSAP. The related proceedings are: STB Finance Docket No. 34198, *ARZC Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.*, STB Finance Docket No. 34199, *CFNR Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.*, and STB Finance Docket No. 34200, *PSAP Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp.* Also, three separate requests for waiver of the 60-day labor notice requirements under 49 CFR 1150.32(e) were filed in those dockets on April 22, 2002.

will directly control ARZC, CFNR, and PSAP when they become Class III rail carriers. ParkSierra will be merged into CFNR.

Consummation of this transaction was scheduled to occur on May 14, 2002.²

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that, as a result of this transaction, there will not be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Although applicants do not expect any employees to be adversely affected by this transaction, under 49 U.S.C. 11326(b), the appropriate level of labor protection to be imposed is that set forth in *Wisconsin Central Ltd.—Acquisition Exem.*—*Union Pac. RR*, 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34197 must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at WWW.STB.DOT.GOV.

Decided: May 16, 2002.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-12996 Filed 5-22-02; 8:45 am]

BILLING CODE 4915-00-P

² Consummation was intended to occur on April 30, 2002, or the date the related waiver requests were granted, whichever was later. Because the waiver requests were granted after April 30, the date the waiver requests were granted, May 14, 2002, became the operative date.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 395X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Cherokee County, KS, and Jasper County, MO

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 28.25-mile line of railroad between milepost 343.55 in Columbus, Cherokee County, KS, and milepost 315.30 in Carthage, Jasper County, MO. The line traverses United States Postal Service Zip Codes 66725, 66728, 64834, 64835 and 64836.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 22, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 3, 2002.³ Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 12, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606-6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 28, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1552. [TDD for the hearing impaired is available at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 23, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: May 17, 2002.

By the Board, Beryl Gordon, Acting
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-12994 Filed 5-22-02; 8:45 am]

BILLING CODE 4915-00-P

² Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at \$1,100. See 49 CFR 1002.2(f)(25).

³ The City of Carl Junction and the Joplin Trail Coalition filed a request for issuance of a notice of interim trail use (NITU) for Missouri portion of the line (milepost 331.23 to milepost 315.30) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the trail use request, and any others that may be filed in a subsequent decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-601X]

Pine Belt Southern Railroad Company, Inc.-Abandonment Exemption-in Russell, Bullock, and Macon Counties, AL

Pine Belt Southern Railroad Company, Inc. (PBRR) has filed a notice of exemption under 49 CFR Part 1152 Subpart F-*Exempt Abandonments* to abandon a 25-mile line of railroad between milepost S-304.00 at Nuckols and milepost S-329.00 at Hurtsboro, in Russell, Bullock, and Macon Counties, AL. The line traverses United States Postal Service Zip Codes 36860, 36875 and 36858.

PBRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 22, 2002,¹ unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 3, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 12, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: G. Richard Abernathy, President, Pine Belt Southern Railroad Company, Inc., P.O. Box 1317, Shelbyville, TN 37162.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

PBRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 28, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1552. (TDD for the hearing impaired is available at 1-800-877-8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PBRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PBRR's filing of a notice of consummation by May 23, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: May 15, 2002.

by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each offer of financial assistance must be accompanied by the filing fee, which, as of April 8, 2002, is set at \$1,100. See 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-12818 Filed 5-22-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 15, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 24, 2002 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems

OMB Number: 1505-0024.

Form Number: International Capital Forms CQ-1 and CQ-2.

Type of Review: Extension.

Title: Treasury International Capital Forms CQ-1 and CQ-2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

Description: Forms CQ-1 and CQ-2 are required by law to collect timely information on international portfolio capital movements, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners held by non-banking enterprises in the U.S. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position and for the formulation of U.S. International financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 6,400 hours.

Clearance Officer: Lois K. Holland, (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

¹ While applicant initially indicated a proposed consummation date of June 20, 2002, because the verified notice was filed on May 3, 2002, consummation may not take place prior to June 22, 2000. Applicant's representative has subsequently confirmed that consummation cannot occur before June 22, 2002.

² The Board will grant a stay if an informed decision on environmental issues (whether raised

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 02-12888 Filed 5-22-02; 8:45 am]

BILLING CODE 4811-16-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 24, 2002, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512-0017.

Form Number: ATF Form 6 (5330.3A) Part I.

Type of Review: Extension.

Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

Description: This information collected is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. Used to secure authorization to import such articles. All persons who desire to import such articles except for person who are members of the U.S. Armed Forces must complete this form.

Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents: 11,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,500 hours.

OMB Number: 1512-0078.

Form Number: ATF F 1533 (5000.18).

Type of Review: Extension.

Title: Consent of Surety.

Description: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. This consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, other (with application and permit change).

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512-0100.

Form Number: ATF F 5000.29 and ATF F 5000.30.

Type of Review: Extension.

Title: ATF F 5000.29: Environmental Information; ATF F 5000.30: Supplemental Information Water Quality Considerations Under 33 U.S.C. 1341(a).

Description: "Environmental impact statements, Water Pollution Environmental evaluation" ATF F 5000.29 and ATF F 5000.30 implement regulations of the Clean Water Act and the National Environmental Policy Act (NEPA authorizes ATF through ATF F 5000.29 to require a license or permit application to state the location of existing or proposed activities concerned with land, air pollution, water and activities related to ATF.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,400 hours.

OMB Number: 1512-0418.

Form Number: ATF F 1533 (5000.18).

Type of Review: Extension.

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

Description: Application to practice before the Bureau of Alcohol, Tobacco and Firearms is necessary so that the Bureau may evaluate the qualification of applicants in order to assure only competent, reputable persons are authorized to represent claimants.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (initial application and renewal every 5 years).

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Jacqueline White, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395-7860.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 02-12889 Filed 5-22-02; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 15, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 24, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0058.

Form Number: IRS Form 1028.

Type of Review: Extension.

Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

Description: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code (IRC) section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 50.

Estimated Burden Hours Per Respondent/Recordkeeper: 2.

Recordkeeping: 44 hr., 14 min.

Learning about the law or the form:
1 hr., 43 min.

Preparing the form: 4 hr., 23 min.

Copying, assembling, and sending
the form to the IRS: 32 min.

Frequency of Response: On occasion.

*Estimated Total Reporting/
Recordkeeping Burden:* 2,545 hours.

OMB Number: 1545-0922.

Form Number: IRS Forms 8329 and
8330.

Type of Review: Extension.

Title: Form 8329: Lender's
Information Return for Mortgage Credit
Certificates (MCCs); and Form 8330:
Issuer's Quarterly Information Return
for Mortgage Credit Certificates (MCCs).

Description: Form 8329 is used by
lending institutions and Form 8330 is
used by state and local governments to
report on mortgage credit certificates
(MCCs) authorized under Internal
Revenue Code (IRC) section 25. IRS
matches the information supplied by
lenders and issuers to ensure that the
credit is computed properly.

Respondents: Business or other for-
profit, State, Local or Tribal Institutions.

*Estimated Number of Respondents/
Recordkeepers:* 10,500.

*Estimated Burden Hours Per
Respondent/Recordkeeper:*

	Form 8329	Form 8330
Recordkeeping	3 hr., 35 min.	4 hr., 32 min.
Learning about the law or the form.	1 hr., 0 min.	1 hr., 17 min.
Preparing and send- ing the form to the IRS.	1 hr., 6 min.	1 hr., 25 min.

Frequency of Response: Quarterly
(8330), Annually (8329).

*Estimated Total Reporting/
Recordkeeping Burden:* 71,320 hours.

Clearance Officer: Glenn Kirkland,
Internal Revenue Service, Room 6411-
03, 1111 Constitution Avenue, NW.,
Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt,
Office of Management and Budget,
Room 10202, New Executive Office
Building, Washington, DC 20503, (202)
395-7860.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 02-12890 Filed 5-22-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2002.

The Department of Treasury has
submitted the following public
information collection requirement(s) to
OMB for review and clearance under the
Paperwork Reduction Act of 1995,
Public Law 104-13. Copies of the
submission(s) may be obtained by
calling the Treasury Bureau Clearance
Officer listed. Comments regarding this
information collection should be
addressed to the OMB reviewer listed
and to the Treasury Department
Clearance Officer, Department of the
Treasury, Room 2110, 1425 New York
Avenue, NW., Washington, DC 20220.

DATES: Written comments should be
received on or before June 24, 2002, to
be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0723.

Regulation Project Number: LR-115-
72 Final.

Type of Review: Extension.

Title: Manufacturers Excise Taxes on
Sporting Goods and Firearms and Other
Administrative Provisions of Special
Application to Manufacturers and
Retailers Excise Taxes.

Description: Chapters 31 and 31 of the
Internal Revenue Code impose excise
taxes on the sale or use of certain
articles. Section 6416 allows a credit or
refund of the tax manufacturers in
certain cases. Section 6420, 6421, and
6427 allow credits or refunds of the tax
to certain users of the articles.

Respondents: Business or other for-
profit, individuals or households, not-
for-profit institutions, Farms, State,
Local or Tribal Governments.

*Estimated Number of Respondents/
Recordkeepers:* 1,500,000.

*Estimated Burden Hours Per
Respondent/Recordkeeper:* 19 minutes.

Frequency of Response: On occasion.

*Estimated Total Reporting/
Recordkeeping Burden:* 475,000 hours.

OMB Number: 1545-1647.

Revenue Procedure Number: Revenue
Procedure 2001-21.

Type of Review: Extension.

Title: Debt Roll-Ups.

Description: This revenue procedure
provides for an election that will
facilitate the consolidation of two or
more outstanding debt instruments into
a single debt instrument. Under the
election, taxpayers can treat certain
exchanges of debt instruments as
realization events for federal income tax
purposes even though the exchanges do
not result in significant modifications

under § 1.1001-3 of the Income Tax
Regulations.

Respondents: Business or other for-
profit.

*Estimated Number of Respondents/
Recordkeepers:* 100.

Estimated Burden Hours Per

Respondent/Recordkeeper: 45 minutes.

Frequency of Response: On occasion.

*Estimated Total Reporting/
Recordkeeping Burden:* 75 hours.

Clearance Officer: Glenn Kirkland,
Internal Revenue Service, Room 6411-
03, 1111 Constitution Avenue, NW.,
Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt,
Office of Management and Budget,
Room 10202, New Executive Office
Building, Washington, DC 20503, (202)
395-7860.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 02-12891 Filed 5-22-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Textile Slippers

AGENCY: United States Customs Service,
Department of the Treasury.

ACTION: Notice of receipt of domestic
interested party petition; solicitation of
comments.

SUMMARY: Customs has received a
petition submitted on behalf of a
domestic interested party requesting the
reclassification of certain imported
slippers with uppers of textile materials
and outer soles that consist of durable
rubber/plastic, the surface of which is
covered with a thin layer of textile
material. Customs has classified this
footwear under subheading 6405.20.90,
Harmonized Tariff Schedule of the
United States (HTSUS), which has a
column one rate of duty of 12.5 percent
ad valorem. The petitioner contends
that the footwear should be classified
under subheading 6404.19.35, HTSUS,
which has a column one rate of duty of
37.5 percent *ad valorem*. The petitioner
argues that the textile material adhered
to the rubber/plastic is not plausible
soling material, does not come into
contact with the ground over the life-
span of the slipper and constitutes a
disguise or artifice. This document
invites comments with regard to the
correctness of the current classification.

DATES: Comments must be received on
or before July 22, 2002.

ADDRESSES: Written comments may be addressed to, and inspected at, the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW., Room 3.4A, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joe Freeman Shankle, Textiles Branch (202) 927-2379.

SUPPLEMENTARY INFORMATION:

Background

This document concerns the tariff classification of certain imported footwear. The imported footwear is a slipper that has an upper of textile material and an outer sole composed of unit-molded rubber/plastics with nubs measuring ¼ inch in diameter evenly spaced across its surface, over which is adhered a thin layer of textile fabric.

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of slippers, requesting that Customs reclassify the imported slippers. Customs has classified this footwear under subheading 6405.20.90, Harmonized Tariff Schedule of the United States (HTSUS), as "Other footwear: With uppers of textile materials: Other" which has a column one rate of duty of 12.5 percent *ad valorem*. The petitioner contends that the footwear should be classified under subheading 6404.19.35, HTSUS, as "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other," which has a column one rate of duty of 37.5 percent *ad valorem*.

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes

(EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the GRI. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989).

Classification of footwear is essentially based upon the composition of the outer soles and uppers. Determinations regarding the constituent material of the outer sole of footwear are governed by Note 4(b), Chapter 64, HTSUS, which states that:

The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

General EN (C) to Chapter 64 states that:

The term "outer sole" as used in headings 64.01 to 64.05 means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments which partly cover the sole (see Note 4(b) to this Chapter).

In New York Ruling Letter (NY) G89205, dated April 19, 2001, and NY G89960, dated April 19, 2001, Customs took the position that even though the purpose of the textile material on the surface of the soles was not explained, it is plausible soling material for footwear of this type, i.e., for indoor use exclusively. The textile material was found to have the greatest surface area in contact with the ground when the slipper is in use. In accordance with Note 4(b) to Chapter 64, HTSUS and with the guidance of the EN to Chapter 64, Customs classified the slippers under subheading 6405.20.90, HTSUS, as having outer soles of material other than rubber, plastics, leather or composition leather.

The petitioner claims that the footwear should be classified in subheading 6404.19.35, HTSUS, as footwear having rubber or plastic outer soles. The petitioner asserts that the textile material applied to the sole of the

slipper is not plausible soling material and constitutes impermissible tariff engineering.

The petitioner conducted a "wear test" and an "abrasion test" to determine the durability of the textile material that comes into contact with the ground. The results of the wear test revealed that the textile material frayed and wore off of the nubs located at the ball and heel of the slipper after 30 days of normal use. The abrasion test revealed that the textile material first began to wear off after 10 cycles. After 100 cycles, approximately 60% of the textile material was worn off. After 200 cycles, approximately 90% of the textile material was worn off. In contrast, the rubber/plastic that is covered by the textile material showed minimal wear when subjected to 200 cycles.

The petitioner relies upon the EN to Chapter 64 which state that the outer sole "means that part of the footwear * * * which, when in use, is in contact with the ground." (Emphasis in original). The petitioner asserts that because the textile material wears off in a relatively short period of time, the constituent material that is in contact with the ground over the life of the slippers is the rubber/plastic, not the textile material.

The petitioner further contends that the textile material overlying the rubber/plastic soles should be excluded from consideration when determining the constituent material of the outer sole. This argument is based on that portion of the EN to Chapter 64, restated here:

* * * In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments which partly cover the sole * * *.

The petitioner maintains that the thin layer of textile material overlying the "rubber soles" of the slippers is akin to an accessory or reinforcement and, therefore, cannot be considered as the constituent material of the outer sole.

The petitioner also argues that the textile material on the outer soles of the slippers is not genuine soling material, but is an "artifice" that must be disregarded. In support of this argument, the petitioner cites to *United States v. Citroen*, 223 U.S. 407 (1911), for the proposition that although articles are to be classified in the condition in which they are imported, this does not mean that a rate of duty can be escaped by resort to disguise or artifice. The petitioner also cites *Heartland By-Products, Inc. v. United States*, 264 F.3d 1126 (Fed. Cir. 2001), in support of the argument that the application of the

textile material to the rubber/plastic sole is disguise and artifice. The petitioner further states that it is the rubber/plastic that gives the sole its rigidity and strength, thereby imparting the commercial identity of the slippers. Despite the adherence of the textile material, it is said that the footwear "is not commercially considered a fabric soled slipper." Lastly, the petitioner contends that the textile material does not contribute to the salability or functionality of the slippers and should be ignored for classification purposes.

Comments

Pursuant to Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on the matter, Customs invites written comments on the petition from interested parties.

The domestic party petition, as well as all comments received in response to this notice, 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 Section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9 a.m. to 4:30 p.m. on regular business days, at the U.S. Customs Service, Office of Regulations and Rulings, Commercial Ruling Division, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Authority

This notice is published in accordance with Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), 19 U.S.C. 1516.

Approved: May 17, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 02-12939 Filed 5-22-02; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday, June 18, 2002, beginning at 9 am at the U.S. Department of Labor, 200

Constitution Avenue, NW., Room S-1229G, Washington, DC, 20210.

Written comments are welcome and may be submitted by addressing them to: Mr. John Muckelbauer, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-1313, Washington, DC, 20210.

The primary items on the agenda are:

Assessment of the employment and training needs of veterans; Discussion of programs and activities designed to meet the employment and training needs of veterans;

Discussion of legislation pertaining to employment and training needs of veterans;

Other matters of interest to the Committee.

The meeting will be open to the public.

Persons needing special accommodations should contact Mr. John Muckelbauer at telephone number 202/693-4700 no later than June 12, 2002.

Signed at Washington, DC, this May 17, 2002.

Frederico Juarbe Jr.,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 02-12958 Filed 5-22-02; 8:45 am]

BILLING CODE 4510-79-P



Federal Register

**Thursday,
May 23, 2002**

Part II

Department of Housing and Urban Development

24 CFR Part 888

**Fair Market Rents for the Housing Choice
Voucher Program and Moderate
Rehabilitation Single Room Occupancy
Program—Fiscal Year 2003; Proposed
Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 888**

[Docket No. FR-4741-N-01]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program—Fiscal Year 2003**AGENCY:** Office of the Secretary, HUD.**ACTION:** Notice of proposed fiscal year (FY) 2003 fair market rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payments (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes. Today's notice proposes revised FMRs that reflect estimated 40th and 50th percentile rent levels trended to April 1, 2003.

DATES: *Comments Due Date:* July 22, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, telephone (202) 708-0477, responsible for decisions on how fair market rents are used. For technical information on the methodology used to develop fair

market rents or a listing of all fair market rents, please call HUD USER at 1-800-245-2691 or access the information on the HUD Web site, <http://www.huduser.org/datasets/fmr.html>. Further questions on the methodology may be addressed to Marie Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0590, (e-mail: marie.l.lihnhud.gov). Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1-800-877-8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the Housing Choice Voucher program, the FMR is used to determine the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see § 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page: <http://www.hudclips.org/cgi/index.cgi>. **Federal Register** notices also are available electronically from the U.S. Government Printing Office web site: http://www.access.gpo.gov/su_docs/aces/aces140.html.

Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and, publish final FMRs after evaluating public comments (see 24 CFR 888.115).

Schedule B of the proposed FY 2003 FMR schedules at the end of this document lists the fair market rents for existing housing, including housing assisted under the housing choice voucher program. Schedule D lists FMRs for the rental of manufactured home spaces in the Housing Choice Voucher program for areas where HUD has approved modifications for the manufactured home space FMR greater

than 40 percent of the 2-bedroom FMR, based on public comments.

In the Moderate Rehabilitation Single Room Occupancy (SRO) program, the fair market rent is 90 percent of the 0-bedroom fair market rent in Schedule B. (This is equivalent to 75 percent of 120 percent of the "Existing Housing Fair Market Rent". See 24 CFR 882.408(a).) The FMR for the moderate rehabilitation SRO program is the maximum initial gross rent (gross rent at the beginning of the HAP contract term).

Units are no longer developed under the regular moderate rehabilitation program. For the purpose of determining renewal gross rents for a HAP contract under the regular moderate rehabilitation program, the applicable FMR is 120 percent of the Schedule B published FMR.

Method Used To Develop FMRs

FMR Standard: FMRs are gross rent estimates, FMRs include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to participants in the voucher program. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent for most areas, the dollar amount below which 40 percent of the standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units that are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

The interim rule establishing 50th percentile FMRs was published on October 2, 2000 (65 FR 58870) and became effective on December 1, 2000. HUD set fair market rents for 39 areas at the 50th percentile rent (i.e., the median rent) effective January 2, 2001 (66 FR 162). HUD set the 50th percentile FMRs to give lower-income families who participate in the Housing Choice Voucher program access to a broader range of housing opportunities throughout a metropolitan area. FMRs have been increased to the 50th percentile rent in those 39 metropolitan areas based on the criteria established in the interim rule which seeks to promote residential choice, help families moves

closer to areas for job growth, and deconcentrate poverty.

The interim rule provided a new paragraph (c) of § 888.113, which states:

(c) *Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.*

(1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term "concentration measure" means the participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under § 982.503 (f).

Schedule B of this document lists the proposed 2002 FMRs for all areas including FMRs for the 39 FMR areas where the FMR is set at the 50th percentile rent level (as specified in § 888.113 (c)), and other areas, where the FMR is set at the 40th percentile rent. An asterisk in Schedule B identifies the 39 FMR areas for which HUD has set 50th percentile FMRs.

HUD has set 50th percentile FMRs for the following metropolitan FMR areas:

Albuquerque, NM
Atlanta, GA
Austin-San Marcos, TX
Baton Rouge, LA

Bergen-Passaic, NJ
Buffalo-Niagara Falls, NY
Chicago, IL
Cleveland-Lorain-Elyria, OH
Dallas, TX
Denver, CO
Detroit, MI
Fort Lauderdale, FL
Fort Worth-Arlington, TX
Grand Rapids-Muskegon-Holland, MI
Houston, TX
Kansas City, MO-KS
Las Vegas, NV-AZ
Miami, FL
Minneapolis-St. Paul, MN-WI
Newark, NJ
Norfolk-Virginia Beach-Newport News, VA-NC
Oakland, CA
Oklahoma City, OK
Orange County, CA
Philadelphia, PA-NJ
Phoenix-Mesa, AZ
Richmond-Petersburg, VA
Sacramento, CA
Salt Lake City-Ogden, UT
San Antonio, TX
San Diego, CA
San Jose, CA
St. Louis, MO-IL
Tampa-St. Petersburg-Clearwater, FL
Tulsa, OK
Ventura, CA
Washington, DC-MD-VA
West Palm Beach-Boca Raton, FL
Wichita, KS

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) The Bureau of the Census' American Housing Survey (AHS), which is used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI contract rent and residential utility cost data are available individually for 96 metropolitan FMR areas and for the four Census Regions. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10

HUD regions. The utility component of RDD surveys is updated using CPI regional utility cost change factors. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

FMRs are established at the higher of the local 40th percentile rent level or the statewide average of nonmetropolitan counties, subject to a ceiling rent cap. These State minimums have the affect of increasing FMRs for a number of nonmetropolitan areas plus a small number of metropolitan areas.

Bedroom Size Adjustments

FMRs have been calculated separately for each bedroom size category. For areas where FMRs are based on the State minimums, the rents for each bedroom size are the higher of the rent for the area or the statewide average of nonmetropolitan counties for that bedroom size. For all other FMR areas, the bedroom intervals are based on 1990 Census rent relationships for the specific area.

Exceptions have been made for some areas with local bedroom size rent intervals below an acceptable range. For those areas the intervals selected were the minimums determined after outliers had been excluded from the distribution of bedroom intervals for all metropolitan areas. Higher ratios continue to be used for three-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units.

The FMRs for unit sizes larger than a 4 bedroom are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single room occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

Random Digit Dialing (RDD) Rent Surveys

RDD surveys are used to obtain statistically reliable FMR estimates for selected FMR areas. This telephone survey technique involves drawing random samples of renter units occupied by recent movers. RDD surveys exclude public housing units, other assisted units for which the market rent cannot be determined, units built in the past two years, seasonal units, non-cash rental units, and those owned by relatives. A HUD analysis has shown that the slight downward RDD

survey bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Approximately 15,000–20,000 telephone numbers need to be contacted to achieve the target survey sample level of 200 eligible recent mover responses. RDD surveys have a high degree of statistical accuracy; there is a 95 percent likelihood that the recent mover rent estimates developed using this approach are within 3 to 4 percent of the actual rent value. Virtually all of the estimates are within 5 percent of the actual value.

Today's notice includes proposed FMR revisions based on RDD surveys conducted in early September 2001 and February/March 2002 for the following areas:

Proposed FMR Increases Above Normal Update Factor

Baltimore, MD PMSA
Cincinnati, OH–KY–IN PMSA
Des Moines, IA MSA
Jersey City, NJ PMSA
Norfolk-Virginia Beach-Newport News, VA–NC MSA
Orlando, FL MSA
Richmond-Petersburg, VA MSA
Scranton-Wilkes-Barre-Hazleton, PA MSA

Proposed FMR Decrease Below Normal Update Factor:

Monmouth-Ocean, NJ PMSA

Survey Supports Increasing FMRs by Normal Update Factor

Bergen-Passaic, NJ PMSA
El Paso, TX MSA
Houston, TX PMSA
Rochester, NY MSA
Seattle-Bellevue-Everett, WA PMSA
Tampa-St. Petersburg-Clearwater, FL MSA
Worcester, MA–CT MSA

Manufactured Home Space FMRs

In the tenant-based voucher program, a family that owns a manufactured home may receive assistance for the rental of a manufactured home space. The FMRs used to calculate the housing assistance payment for rental of a manufactured home space are generally 40 percent of the applicable Section 8 existing housing FMRs for two-bedroom units. Cost of utilities is now included in the manufactured home space rent (see 24 CFR 888.113(e)).

HUD will consider modifications of manufactured home space FMRs where public comment demonstrates that the 40 percent FMRs are not adequate. In order to be accepted as a basis for revising the manufactured home space

FMRs, comments must contain statistically valid survey data that show the 40th percentile space rent for the entire FMR area.

The published manufactured home space FMRs are updated annually using the same data used to update the other FMRs.

Request for Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

HUD recommends the use of professionally conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of about \$15,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual two-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of \$5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties whose FMRs are based on the State minimum will not have their FMRs revised unless the grouped survey results show a revised FMR above the State minimum level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys: A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain a guide entitled "Rental Housing Surveys: A Guide to Assist Smaller Public Housing Agencies in Preparing

Fair Market Rent Comments." These guides are available from HUD USER on 1–800–245–2691, or from HUD's Worldwide Web site, in Microsoft Word or Adobe Acrobat format, at the following address: <http://www.huduser.org/datasets/fmr.html>.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the survey guide intended for small PHAs along with the simplified RDD methodology. Other survey methodologies are acceptable as long as the surveys submitted provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Local rental housing surveys conducted with alternative methods must include the following documentation:

- Identification of the 40th percentile or 50th gross rent (gross rent is rent including the cost of utilities) and the actual distribution (or distributions, if more than one bedroom size is surveyed) of the surveyed units, rank-ordered by gross rent.
- An explanation of how the rental-housing sample was drawn and a copy of the survey questionnaire, transmittal letter, and any publicity materials.
- An explanation of how the contract rents of the individual units surveyed were converted to gross rents. (For RDD-type surveys, HUD requires use of the Section 8 utility allowance schedule.)
- An explanation of how the survey excluded units built within two years prior to the survey date.
- The date the rent data was collected so that HUD can apply a trending factor to update the estimate to the midpoint of the applicable fiscal year. If the survey has already been trended to this date, the date the survey was conducted and a description of the trending factor used.
- Copies of all survey sheets.

Since FMRs are based on standard quality units and units occupied by

recent movers, both of which are difficult to identify and survey, HUD will accept surveys of all rental units and apply appropriate adjustments.

Most surveys cover only one- and two-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the 1990 Census data for the FMR area. When three- and four-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 40th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as follows:

Dated: May 15, 2002.

Mel Martinez,
Secretary.

Fair Market Rents

Schedules B and D—General Explanatory Notes

1. *Geographic Coverage.* a. *Metropolitan Areas.*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. The FMRs shown in Schedule B are determined for the same areas as the Office of Management and Budget's (OMB) most current definitions of metropolitan areas, with the exceptions discussed in paragraph b. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions.*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted

Chicago, IL
DeKalb, Grundy and Kendall Counties
Cincinnati—Hamilton, OH—KY—IN
Brown County, Ohio; Gallatin, Grant and Pendleton Counties in
Kentucky; and Ohio County, Indiana
Dallas, TX
Henderson County
Flagstaff, AZ—UT:
Kane County, UT
New Orleans, LA
St. James Parish
Washington, DC—MD—VA—WV
Berkeley and Jefferson Counties in
West Virginia; and Clarke,
Culpeper, King George and Warren
Counties in Virginia

c. *Nonmetropolitan Area FMRs.*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states, and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands. Nonmetropolitan area FMRs are set at the higher of the local 40th percentile rent level or the statewide average of nonmetropolitan counties. (The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.)

d. *Virginia Independent Cities.*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The complete definitions of these areas including the independent cities are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED

County	Cities
Alleghany	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southampton	Franklin.

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED—Continued

County	Cities
Wise	Norton.

2. *Bedroom Size Adjustments.*—Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

3. *FMRs for Manufactured Home Spaces.*—FMRs for manufactured home spaces in the housing choice voucher program are 40 percent of the two-bedroom existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the housing choice voucher program are the same as the area definitions used for other FMRs.

4. *Arrangement of FMR Areas and Identification of Constituent Parts.*—a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

BILLING CODE 4210-62-P

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Aniston, AL MSA.....	278	329	412	574	650	Calhoun
Auburn-Opelika, AL MSA.....	277	387	497	646	817	Lee
Birmingham, AL MSA.....	424	479	557	756	837	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA.....	376	418	501	654	710	Russell
Decatur, AL MSA.....	369	373	469	609	728	Lawrence, Morgan
Dothan, AL MSA.....	334	342	425	584	593	Dale, Houston
Florence, AL MSA.....	314	360	462	577	647	Colbert, Lauderdale
Gadsden, AL MSA.....	278	340	392	509	627	Etowah
Huntsville, AL MSA.....	387	454	559	745	887	Limestone, Madison
Mobile, AL MSA.....	406	454	521	701	822	Baldwin, Mobile
Montgomery, AL MSA.....	424	453	535	729	878	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA.....	366	391	521	715	756	Tuscaloosa

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Barbour.....	261	311	370	480	550	Bibb.....	261	311	370	500	599
Bullock.....	261	311	370	480	550	Butler.....	261	311	370	480	550
Chambers.....	261	311	370	480	551	Cherokee.....	261	311	370	480	550
Chilton.....	271	311	370	480	550	Choctaw.....	261	311	370	480	550
Clarke.....	261	311	370	480	550	Clay.....	261	311	370	480	550
Cleburne.....	261	311	370	480	550	Coffee.....	261	367	477	663	744
Conecuh.....	261	311	370	480	550	Coosa.....	261	311	370	480	550
Covington.....	261	311	370	480	550	Crenshaw.....	261	311	370	480	550
Cullman.....	261	311	370	492	598	Dallas.....	261	311	370	480	550
Dekalb.....	261	311	370	480	550	Escambia.....	261	311	370	480	550
Fayette.....	261	311	370	480	550	Franklin.....	261	311	370	480	550
Geneva.....	261	311	370	480	550	Greene.....	261	311	370	480	550
Hale.....	261	311	370	480	550	Henry.....	261	311	370	480	550
Jackson.....	282	311	370	480	589	Lamar.....	261	311	370	480	550
Lowndes.....	261	311	370	480	550	Macon.....	285	320	427	535	599
Marengo.....	261	311	370	480	550	Marion.....	261	311	370	480	550
Marshall.....	300	311	378	522	619	Monroe.....	261	311	370	480	550
Perry.....	261	311	370	480	550	Pickens.....	261	311	370	480	550
Pike.....	313	364	434	563	656	Randolph.....	261	311	370	480	550
Sumter.....	261	311	370	480	550	Talladega.....	261	311	370	480	550
Tallapoosa.....	262	311	370	480	550	Walker.....	261	322	380	491	624
Washington.....	261	311	370	480	550	Wilcox.....	261	311	370	480	550
Winston.....	261	311	370	480	550						

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Anchorage, AK MSA..... 537 635 842 1171 1383 Anchorage

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Aleutian East..... 552 622 703 877 1148

Aleutian West..... 474 536 600 753 843

Bethel..... 714 892 1131 1416 1584

Bristol Bay..... 572 661 742 1033 1122

Dillingham..... 690 701 932 1166 1306

Fairbanks North Star.... 435 592 777 1068 1259

Haines..... 514 637 725 986 1016

Juneau..... 768 887 1130 1502 1561

Kenai Peninsula..... 468 596 718 996 1177

Ketchikan Gateway..... 564 691 924 1286 1354

Kodiak Island..... 734 807 1049 1311 1701

Lake & Peninsula..... 441 715 803 1002 1126

Matanuska-Susitna..... 494 668 752 1021 1206

Nome..... 726 898 1009 1405 1585

North Slope..... 825 845 1045 1452 1692

Northwest Arctic..... 874 983 1103 1535 1811

Pr. Wales-Outer Ketchikan 385 612 705 978 1034

Sitka..... 607 722 810 1128 1330

Skagway-Yakutat-Angoon.. 472 480 621 779 874

Southeast Fairbanks..... 484 508 612 767 861

Valdez-Cordova..... 577 707 785 1002 1195

Wade Hampton..... 413 621 701 876 981

Wrangell-Petersburg..... 420 619 753 958 1053

Yukon-Koyukuk..... 550 620 700 875 1012

A R I Z O N A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Flagstaff, AZ..... 611 660 857 1149 1380

Coconino

*Las Vegas, NV-AZ MSA..... 585 694 827 1150 1359

Mohave

*Phoenix-Mesa, AZ MSA..... 530 641 806 1121 1320

Maricopa, Pinal

Tucson, AZ MSA..... 428 513 683 949 1119

Pima

Yuma, AZ MSA..... 412 478 636 884 890

Yuma

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Apache..... 391 411 522 682 810

Cochise..... 391 411 522 682 810

Gila..... 391 411 522 682 810

Graham..... 391 411 522 682 810

Greenlee..... 391 411 522 682 810

La Paz..... 391 411 522 682 810

Navajo..... 391 411 522 682 810

Santa Cruz..... 391 432 538 682 810

Yavapai..... 415 432 578 806 887

A R K A N S A S

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Fayetteville-Springdale-Rogers, AR MSA..... 329 415 545 736 761

Benton, Washington

Fort Smith, AR-OK MSA..... 358 362 477 637 669

Crawford, Sebastian

Jonesboro, AR MSA..... 388 422 496 683 722

Craighead

Little Rock-North Little Rock, AR MSA..... 405 450 536 740 864

Faulkner, Lonoke, Pulaski, Saline

Memphis, TN-AR-MS MSA..... 456 532 624 867 910

Crittenden

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

METROPOLITAN FMR AREAS										0 BR 1 BR 2 BR 3 BR 4 BR										Counties of FMR AREA within STATE																			
Pine Bluff, AR MSA.....										310 368 484 611 792 Jefferson																													
Texarkana, TX-Texarkana, AR MSA.....										330 403 493 650 690 Miller																													
NONMETROPOLITAN COUNTIES										0 BR 1 BR 2 BR 3 BR 4 BR										NONMETROPOLITAN COUNTIES										0 BR 1 BR 2 BR 3 BR 4 BR									
Arkansas.....										279 303 388 530 575										Ashley.....										255 303 388 514 608									
Baxter.....										255 324 431 554 675										Boone.....										302 307 408 568 669									
Bradley.....										255 303 388 514 575										Calhoun.....										255 303 388 514 575									
Carroll.....										300 327 388 514 614										Chicot.....										255 303 388 514 575									
Clark.....										279 303 393 514 621										Clay.....										255 303 388 514 575									
Cleburne.....										288 303 388 514 582										Cleveland.....										255 303 388 514 575									
Columbia.....										255 303 388 514 575										Conway.....										255 314 421 526 589									
Cross.....										265 335 388 521 615										Dallas.....										255 303 388 514 575									
Deshia.....										255 303 388 514 575										Drew.....										255 330 440 609 620									
Franklin.....										267 303 388 514 575										Fulton.....										264 303 388 514 575									
Garland.....										255 324 434 606 716										Grant.....										265 314 388 514 580									
Greene.....										273 303 388 514 575										Hempstead.....										255 303 388 514 575									
Hot Spring.....										255 303 388 514 575										Howard.....										255 303 388 514 575									
Independence.....										268 310 388 514 575										Izard.....										255 303 388 514 575									
Jackson.....										264 303 388 514 575										Johnson.....										255 303 388 514 575									
Lafayette.....										267 303 388 514 575										Lawrence.....										255 303 388 514 575									
Lee.....										280 303 388 514 575										Lincoln.....										275 303 394 527 575									
Little River.....										255 303 394 547 645										Logan.....										267 303 388 514 575									
Madison.....										292 303 394 514 575										Marion.....										255 303 388 514 575									
Mississippi.....										291 314 421 555 623										Monroe.....										259 303 388 514 575									
Montgomery.....										255 303 388 514 575										Nevada.....										255 303 388 531 575									
Newton.....										255 303 388 514 575										Ouachita.....										298 303 388 535 631									
Perry.....										255 303 388 514 575										Phillips.....										255 303 388 514 575									
Pike.....										255 303 388 514 575										Poinsett.....										255 303 388 514 575									
Polk.....										255 303 388 514 575										Pope.....										255 333 421 584 673									
Prairie.....										255 303 388 514 575										Randolph.....										255 303 388 514 575									
St. Francis.....										255 309 388 525 617										Scott.....										255 303 388 514 575									
Searcy.....										255 303 388 514 575										Sevier.....										278 303 388 514 575									
Sharp.....										255 303 388 514 575										Stone.....										255 303 388 514 575									
Union.....										319 337 405 544 665										Van Buren.....										255 303 388 514 634									
White.....										255 303 388 531 575										Woodruff.....										255 303 388 514 575									
Yell.....										265 303 388 514 575																													

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Bakersfield, CA MSA.....	407	457	575	798	883	Kern					
Chico-Paradise, CA MSA.....	372	479	637	874	1045	Butte					
Fresno, CA MSA.....	423	473	564	786	906	Fresno, Madera					
Los Angeles-Long Beach, CA PMSA.....	571	683	865	1167	1394	Los Angeles					
Merced, CA MSA.....	444	501	608	841	992	Merced					
Modesto, CA MSA.....	530	569	694	968	1142	Stanislaus					
*Oakland, CA PMSA.....	905	1095	1374	1883	2249	Alameda, Contra Costa					
*Orange County, CA PMSA.....	855	934	1155	1607	1788	Orange					
Redding, CA MSA.....	423	469	587	815	960	Shasta					
Riverside-San Bernardino, CA PMSA.....	507	564	690	957	1130	Riverside, San Bernardino					
*Sacramento, CA PMSA.....	530	597	747	1037	1222	El Dorado, Placer, Sacramento					
Salinas, CA MSA.....	598	700	844	1172	1231	Monterey					
*San Diego, CA MSA.....	766	875	1095	1524	1796	San Diego					
San Francisco, CA PMSA.....	1185	1535	1940	2661	2816	Marin, San Francisco, San Mateo					
*San Jose, CA PMSA.....	1250	1425	1760	2412	2709	Santa Clara					
San Luis Obispo-Atascadero-Paso Robles, CA MSA..	619	699	886	1232	1454	San Luis Obispo					
Santa Barbara-Santa Maria-Lompoc, CA MSA.....	696	773	980	1364	1540	Santa Barbara					
Santa Cruz-Watsonville, CA PMSA.....	816	972	1298	1805	2114	Santa Cruz					
Santa Rosa, CA PMSA.....	767	869	1126	1566	1849	Sonoma					
Stockton-Lodi, CA MSA.....	504	569	731	1018	1200	San Joaquin					
Vallejo-Fairfield-Napa, CA PMSA.....	784	891	1086	1508	1779	Napa, Solano					
*Ventura, CA PMSA.....	743	854	1081	1437	1675	Ventura					
Visalia-Tulare-Porterville, CA MSA.....	412	439	572	798	911	Tulare					
Yolo, CA PMSA.....	532	607	752	1040	1230	Yolo					
Yuba City, CA MSA.....	367	429	551	769	888	Sutter, Yuba					
NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR					
Alpine.....	332	498	563	782	842	Amador.....	458	504	673	937	1045
Calaveras.....	401	464	618	861	1013	Colusa.....	363	406	522	728	842
Del Norte.....	339	465	618	862	1015	Glenn.....	332	406	522	728	842
Humboldt.....	342	474	621	867	1025	Imperial.....	374	469	577	804	842
Inyo.....	344	464	595	781	842	Kings.....	384	448	558	777	914
Lake.....	373	475	635	799	1041	Lassen.....	406	411	534	728	842
Mariposa.....	359	456	586	768	905	Mendocino.....	459	553	679	945	952
Modoc.....	363	406	522	728	842	Mono.....	506	607	807	1123	1327
Nevada.....	415	568	757	1052	1218	Plumas.....	366	406	522	728	842
San Benito.....	571	672	841	1172	1371	Sierra.....	332	446	548	761	898
Siskiyou.....	348	406	522	728	842	Tehama.....	347	406	522	728	842
Trinity.....	372	406	522	728	842	Tuolumne.....	367	501	668	930	1096

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O L O R A D O

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Boulder-Longmont, CO PMSA..... 626 750 962 1341 1580 Boulder
 Colorado Springs, CO MSA..... 482 518 690 962 1135 El Paso
 *Denver, CO PMSA..... 595 710 945 1311 1548 Adams, Arapahoe, Denver, Douglas, Jefferson
 Fort Collins-Loveland, CO MSA..... 476 588 727 1010 1193 Larimer
 Grand Junction, CO MSA..... 438 456 570 768 914 Mesa

Greeley, CO PMSA..... 526 581 731 1014 1200 Weld
 Pueblo, CO MSA..... 462 478 598 805 961 Pueblo

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Alamosa..... 414 429 537 724 863 Archuleta..... 495 542 641 865 1028
 Baca..... 414 429 537 724 863 Bent..... 414 429 537 724 863
 Chaffee..... 414 429 537 724 863 Cheyenne..... 414 429 537 724 863
 Clear Creek..... 414 484 546 760 895 Conejos..... 414 429 537 724 863
 Costilla..... 414 429 537 724 863 Crowley..... 414 429 537 724 863
 Custer..... 414 429 537 724 863 Delta..... 414 429 537 724 863
 Dolores..... 414 429 537 724 863 Eagle..... 556 607 809 1126 1328
 Elbert..... 458 506 580 724 950 Fremont..... 414 429 537 724 863
 Garfield..... 481 515 651 813 1065 Gilpin..... 414 550 700 923 1020
 Grand..... 492 496 628 786 952 Gunnison..... 414 429 537 724 863
 Hinsdale..... 414 438 537 724 863 Huerfano..... 414 429 537 724 863
 Jackson..... 414 429 537 724 863 Kiowa..... 414 429 537 724 863
 Kit Carson..... 414 429 537 724 863 Lake..... 414 429 537 724 863
 La Plata..... 541 598 788 1098 1296 Las Animas..... 414 443 537 724 863
 Lincoln..... 414 429 537 724 863 Logan..... 414 429 537 724 863
 Mineral..... 414 429 537 724 863 Moffat..... 414 429 537 724 863
 Montezuma..... 414 429 537 724 863 Montrose..... 414 429 543 753 887
 Morgan..... 414 429 537 724 863 Otero..... 414 429 537 724 863
 Ouray..... 414 429 543 724 879 Park..... 414 459 597 829 943
 Phillips..... 414 429 537 724 863 Pitkin..... 621 850 1132 1493 1698
 Prowers..... 414 429 537 724 863 Rio Blanco..... 414 429 537 724 863
 Rio Grande..... 414 429 537 724 863 Routt..... 414 500 661 919 1083
 Saguache..... 414 429 537 724 863 San Juan..... 414 429 537 724 863
 San Miguel..... 761 1100 1209 1510 1950 Sedgwick..... 414 429 537 724 863
 Summit..... 533 638 819 1139 1402 Teller..... 414 491 654 909 917
 Washington..... 414 429 537 724 863 Yuma..... 414 429 537 724 863

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA.....	517	673	810	1013	1263		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 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 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 Hartington 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.....	597	733	905	1160	1344		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 town, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town 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
New London-Norwich, CT-RI MSA.....	532	643	784	980	1121		

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS

	0 BR 1 BR 2 BR 3 BR 4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA.....	1006 1178 1436 1925 2126	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT PMSA.....	507 685 849 1058 1186	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.....	521 629 785 980 1099	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES

	0 BR 1 BR 2 BR 3 BR 4 BR	Towns within non metropolitan counties
Hartford.....	393 635 717 996 1174	Hartland town
Litchfield.....	457 622 830 1035 1179	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.....	676 766 1023 1424 1679	Chester town, Deep River town, Essex town Westbrook town
New London.....	573 702 797 1028 1305	Lyme town, Voluntown town
Tolland.....	393 635 717 996 1003	Union town
Windham.....	453 553 717 898 1126	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

	0 BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Dover, DE MSA.....	523 579 659 855 973	Kent
Wilmington-Newark, DE-MD PMSA.....	490 645 752 1022 1235	New Castle

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Sussex..... 460 489 624 820 876

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Washington, DC-MD-VA..... 748 851 999 1360 1642 District of Columbia

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Daytona Beach, FL MSA.....	418	490	626	830	882	Flagler, Volusia					
*Fort Lauderdale, FL PMSA.....	547	644	798	1110	1305	Broward					
Fort Myers-Cape Coral, FL MSA.....	449	516	623	871	908	Lee					
Fort Pierce-Port Lucie, FL MSA.....	499	547	709	922	994	Martin, St. Lucie					
Fort Walton Beach, FL MSA.....	435	475	540	733	863	Okaloosa					
Gainesville, FL MSA.....	435	475	578	792	936	Alachua					
Jacksonville, FL MSA.....	499	559	673	889	990	Clay, Duval, Nassau, St. Johns					
Lakeland-Winter Haven, FL MSA.....	418	457	516	640	700	Polk					
Melbourne-Titusville-Palm Bay, FL MSA.....	418	489	611	818	953	Brevard					
*Miami, FL PMSA.....	518	652	813	1116	1293	Dade					
Naples, FL MSA.....	465	656	790	1098	1223	Collier					
Ocala, FL MSA.....	435	475	540	709	831	Marion					
Orlando, FL MSA.....	604	685	817	1072	1308	Lake, Orange, Osceola, Seminole					
Panama City, FL MSA.....	435	475	540	689	739	Bay					
Pensacola, FL MSA.....	435	475	540	721	850	Escambia, Santa Rosa					
Punta Gorda, FL MSA.....	435	500	666	923	1088	Charlotte					
Sarasota-Bradenton, FL MSA.....	437	555	706	907	988	Manatee, Sarasota					
Tallahassee, FL MSA.....	445	494	650	849	1024	Gadsden, Leon					
*Tampa-St. Petersburg-Clearwater, FL MSA.....	505	601	745	989	1199	Hernando, Hillsborough, Pasco, Pinellas					
*West Palm Beach-Boca Raton, FL MSA.....	568	663	820	1088	1348	Palm Beach					
NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR											
Baker.....	410	449	508	630	684	Bradford.....	410	449	508	630	684
Calhoun.....	410	449	508	630	684	Citrus.....	410	449	508	630	684
Columbia.....	410	449	508	630	684	Desoto.....	410	449	508	630	684
Dixie.....	410	449	508	630	684	Franklin.....	410	449	508	630	684
Gilchrist.....	410	449	508	630	684	Glades.....	410	449	508	630	684
Gulf.....	410	449	508	630	684	Hamilton.....	410	449	508	630	684
Hardee.....	410	449	508	630	684	Hendry.....	410	449	522	656	735
Highlands.....	410	449	508	632	707	Holmes.....	410	449	508	630	684
Indian River.....	410	513	660	826	924	Jackson.....	410	449	508	630	684
Jefferson.....	410	449	508	630	684	Lafayette.....	410	449	508	630	684
Levy.....	410	449	508	630	684	Liberty.....	410	449	508	630	684
Madison.....	410	449	508	630	684	Monroe.....	588	663	852	1174	1397
Okeechobee.....	410	449	508	630	690	Putnam.....	410	449	508	630	684
Sumter.....	410	449	508	630	684	Suwannee.....	410	449	508	630	684
Taylor.....	410	449	508	630	685	Union.....	410	449	508	630	684
Wakulla.....	410	449	508	630	684	Walton.....	410	449	508	654	818
Washington.....	410	449	508	630	684						

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albany, GA MSA.....	325	381	464	634	687	Dougherty, Lee
Athens, GA MSA.....	400	431	558	761	918	Clarke, Madison, Oconee
*Atlanta, GA MSA.....	714	795	927	1236	1495	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.....	410	491	578	785	928	Columbia, McDuffie, Richmond
Chattanooga, TN-GA MSA.....	392	458	550	711	811	Catoosa, Dade, Walker
Columbus, GA-AL MSA.....	376	418	501	654	710	Chattahoochee, Harris, Muscogee
Macon, GA MSA.....	420	467	544	750	772	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA.....	391	487	566	762	793	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Appling.....	298	359	439	569	648	Atkinson.....	298	359	439	569	648
Bacon.....	298	359	439	569	648	Baker.....	298	359	439	569	648
Baldwin.....	298	382	465	597	652	Banks.....	298	359	439	569	648
Ben Hill.....	298	359	439	569	656	Berrien.....	298	359	439	569	648
Bleckley.....	298	359	439	569	648	Brantley.....	298	359	439	569	648
Brooks.....	298	359	439	569	648	Bulloch.....	359	365	468	604	767
Burke.....	298	359	439	569	648	Butts.....	298	395	523	702	735
Calhoun.....	298	359	439	569	648	Camden.....	418	472	528	735	869
Candler.....	298	359	439	569	648	Charlton.....	298	359	439	569	648
Chattooga.....	298	359	439	569	648	Clay.....	298	359	439	569	648
Clinch.....	298	359	439	569	648	Coffee.....	298	359	439	569	656
Colquitt.....	298	359	439	569	648	Cook.....	298	359	439	569	648
Crawford.....	298	359	439	569	648	Crisp.....	302	359	439	569	648
Dawson.....	298	389	516	647	796	Decatur.....	298	359	439	569	648
Dodge.....	298	359	439	569	648	Dooley.....	298	359	439	569	648
Early.....	298	359	439	569	648	Echols.....	298	359	439	569	648
Elbert.....	298	359	439	569	648	Emanuel.....	298	359	439	569	648
Evans.....	298	359	439	569	648	Fannin.....	298	359	439	569	648
Floyd.....	298	359	440	580	648	Franklin.....	298	359	439	569	648
Gilmer.....	298	359	439	569	648	Glascock.....	298	359	439	569	648
Glynn.....	416	465	526	708	867	Gordon.....	353	359	448	577	738
Grady.....	304	359	439	569	648	Greene.....	298	359	439	569	648
Habersham.....	320	359	439	569	653	Hall.....	316	480	564	707	788
Hancock.....	298	359	439	569	648	Haralson.....	298	359	439	569	648
Hart.....	298	359	439	569	648	Heard.....	298	359	439	569	648
Irwin.....	298	359	439	569	648	Jackson.....	332	359	451	569	742
Jasper.....	298	359	445	604	648	Jeff Davis.....	298	359	439	569	648
Jefferson.....	298	359	439	569	656	Jenkins.....	298	359	439	569	648

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Johnson.....	298	359	439	569	648	Lamar.....	298	369	439
Lanier.....	298	359	439	569	648	Laurens.....	305	359	439
Liberty.....	371	414	471	655	660	Lincoln.....	298	359	439
Long.....	298	389	439	569	648	Lowndes.....	334	404	489
Lumpkin.....	298	402	452	605	742	Mcintosh.....	298	359	439
Macon.....	298	359	439	569	648	Marion.....	298	359	439
Meriwether.....	298	359	439	569	648	Miller.....	298	359	439
Mitchell.....	298	359	439	569	648	Monroe.....	298	359	439
Montgomery.....	298	359	439	569	648	Morgan.....	298	359	455
Murray.....	298	359	439	569	648	Oglethorpe.....	298	359	439
Pierce.....	298	359	439	569	648	Pike.....	346	375	476
Polk.....	298	359	439	595	648	Pulaski.....	298	359	439
Putnam.....	298	359	439	569	656	Quitman.....	298	359	439
Rabun.....	298	359	439	569	648	Randolph.....	298	359	439
Schley.....	298	359	439	569	648	Screven.....	298	359	439
Seminole.....	298	359	439	569	648	Stephens.....	298	359	439
Stewart.....	298	359	439	569	648	Sumter.....	298	365	439
Talbot.....	298	359	439	569	648	Taliaferro.....	298	359	439
Tattnall.....	298	359	439	569	648	Taylor.....	298	359	439
Telfair.....	298	359	439	569	648	Terrell.....	298	359	439
Thomas.....	298	370	439	569	648	Tift.....	298	359	439
Toombs.....	298	359	439	569	648	Towns.....	298	359	439
Treutlen.....	298	359	439	569	648	Troup.....	298	406	457
Turner.....	298	359	439	569	648	Union.....	298	359	458
Upson.....	309	359	439	569	648	Ware.....	330	370	439
Warren.....	298	359	439	569	648	Washington.....	298	359	439
Wayne.....	309	359	439	569	648	Webster.....	298	359	439
Wheeler.....	298	359	439	569	648	White.....	298	359	439
Whitfield.....	298	392	471	602	710	Wilcox.....	298	359	439
Wilkes.....	298	359	439	569	648	Wilkinson.....	298	359	439
Worth.....	298	359	439	569	648				

H A W A I I

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Honolulu, HI MSA..... 599 717 844 1142 1235 Honolulu

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

H A W A I I continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	0 BR	1 BR	2 BR	3 BR	4 BR	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii.....	466	608	699	929	1145										
Maui.....	753	934	1140	1472	1667										

I D A H O

METROPOLITAN FMR AREAS

0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA.....	419	477	580	805	952 Ada, Canyon
Pocatello, ID MSA.....	301	347	447	609	720 Bannock

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	0 BR	1 BR	2 BR	3 BR	4 BR

Adams.....	296	344	443	588	696					
Benewah.....	296	344	443	588	696					
Blaine.....	458	505	672	938	1104					
Bonner.....	341	422	524	724	833					
Boundary.....	296	344	443	588	696					

Camas.....	296	344	443	588	696					
Cassia.....	296	344	443	588	696					
Clearwater.....	296	344	443	588	696					
Elmore.....	296	344	443	588	696					
Fremont.....	296	344	443	588	696					

Gooding.....	296	344	443	588	696					
Jefferson.....	306	344	443	588	696					
Kootenai.....	377	443	580	807	954					
Lemhi.....	296	344	443	588	696					
Lincoln.....	296	344	443	588	696					

Minidoka.....	296	344	443	588	696					
Oneida.....	297	344	443	588	696					
Payette.....	296	344	443	588	696					
Shoshone.....	296	344	443	588	696					
Twin Falls.....	296	344	448	592	696					

Washington.....	296	344	443	588	696					

I L L I N O I S

METROPOLITAN FMR AREAS

0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA.....	364	443	594	825	871 Mclean
Champaign-Urbana, IL MSA.....	400	492	636	872	1046 Champaign
*Chicago, IL.....	649	778	928	1160	1298 Cook, Dupage, Kane, Lake, McHenry, Will
Davenport-Moline-Rock Island, IA-IL MSA.....	300	414	512	662	718 Henry, Rock Island

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S continued

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							Counties of FMR AREA within STATE						
0	BR 1	BR 2	BR 3	BR 4	BR								
	290	376	482	652	675	Macon							
Decatur, IL MSA.....	498	579	733	1020	1182	Dekalb							
De Kalb County, IL.....	433	501	665	879	934	Grundy							
Grundy County, IL.....	394	477	634	811	891	Kankakee							
Kankakee, IL PMSA.....	601	684	825	1148	1154	Kendall							
Kendall County, IL.....													
Peoria-Pekin, IL MSA.....	403	444	596	794	975	Peoria, Tazewell, Woodford							
Rockford, IL MSA.....	387	496	603	758	885	Boone, Ogle, Winnebago							
*St. Louis, MO-IL MSA.....	415	505	655	853	942	Clinton, Jersey, Madison, Monroe, St. Clair							
Springfield, IL MSA.....	334	414	551	733	834	Menard, Sangamon							

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adams.....	277	311	400	525	638	Alexander.....	277	311	400	525	589
Bond.....	277	311	400	525	589	Brown.....	277	311	400	525	589
Bureau.....	277	350	409	525	589	Calhoun.....	277	311	400	525	589
Carroll.....	277	311	400	525	589	Cass.....	278	311	400	525	589
Christian.....	298	311	402	528	589	Clark.....	277	311	400	525	589
Clay.....	277	311	400	525	589	Coles.....	292	349	463	616	727
Crawford.....	277	311	400	525	589	Cumberland.....	277	311	400	525	589
De Witt.....	281	311	400	530	589	Douglas.....	296	311	400	525	589
Edgar.....	277	311	400	525	589	Edwards.....	277	311	400	525	589
Effingham.....	277	320	400	525	589	Fayette.....	277	311	400	525	589
Ford.....	263	370	481	618	675	Franklin.....	277	311	400	525	589
Fulton.....	285	319	411	540	607	Gallatin.....	277	311	400	525	589
Greene.....	277	311	400	525	589	Hamilton.....	277	312	400	525	589
Hancock.....	277	311	400	525	589	Hardin.....	277	311	400	525	589
Henderson.....	277	311	400	525	589	Iroquois.....	277	311	400	525	589
Jackson.....	335	336	426	604	676	Jasper.....	277	313	400	525	589
Jefferson.....	278	326	407	555	589	Jo Daviess.....	306	331	400	525	589
Johnson.....	277	311	400	525	589	Knox.....	277	311	400	525	610
La Salle.....	335	394	525	710	796	Lawrence.....	277	311	400	525	589
Lee.....	308	317	425	531	595	Livingston.....	277	341	456	587	641
Logan.....	310	329	439	549	688	Mcdonough.....	277	316	400	525	631
Macoupin.....	277	311	400	525	589	Marion.....	282	311	400	525	589
Marshall.....	277	311	400	525	589	Mason.....	277	311	400	525	596
Massac.....	278	311	400	525	589	Mercer.....	277	311	400	525	589
Montgomery.....	277	311	400	525	589	Morgan.....	277	352	466	622	655
Moultrie.....	277	311	400	539	589	Perry.....	278	311	400	525	589
Piatt.....	277	336	438	596	614	Pike.....	277	311	400	525	589
Pope.....	277	311	400	525	589	Pulaski.....	277	311	400	525	589
Putnam.....	277	311	400	525	589	Randolph.....	277	311	400	525	589

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES														
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4										
Richland.....	277	311	400	525	589	Saline.....	277	311	400	525	589								
Schuyler.....	277	311	400	525	589	Scott.....	277	311	400	525	589								
Shelby.....	277	311	400	525	589	Stark.....	277	311	400	525	589								
Stephenson.....	292	334	424	530	593	Union.....	277	311	400	525	589								
Vermilion.....	277	354	441	551	618	Wabash.....	277	311	400	525	623								
Warren.....	292	311	400	525	589	Washington.....	277	331	442	553	719								
Wayne.....	277	311	400	525	589	White.....	277	311	400	525	589								
Whiteside.....	292	332	443	554	625	Williamson.....	277	311	402	558	589								
I N D I A N A																			
METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE														
					0	BR 1	BR 2	BR 3	BR 4										
Bloomington, IN MSA.....					395	511	680	946	1118	Monroe									
Cincinnati, OH-KY-IN.....					386	495	662	887	958	Dearborn									
Elkhart-Goshen, IN MSA.....					399	456	575	736	846	Elkhart									
Evansville-Henderson, IN-KY MSA.....					342	407	529	660	739	Posey, Vanderburgh, Warrick									
Fort Wayne, IN MSA.....					342	435	542	698	757	Adams, Allen, De Kalb, Huntington, Wells, Whitley									
Gary, IN PMSA.....					440	579	721	907	1012	Lake, Porter									
Indianapolis, IN MSA.....					390	489	588	736	825	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison									
Kokomo, IN MSA.....					368	434	567	729	794	Marion, Morgan, Shelby									
Lafayette, IN MSA.....					373	473	630	876	1035	Howard, Tipton									
Louisville, KY-IN MSA.....					368	473	581	801	845	Clinton, Tippecanoe									
Muncie, IN MSA.....					383	477	566	767	905	Clark, Floyd, Harrison, Scott									
Ohio County, IN.....					322	363	464	598	658	Delaware									
South Bend, IN MSA.....					343	457	599	749	841	Ohio									
Terre Haute, IN MSA.....					309	361	462	575	642	St. Joseph									
										Clay, Vermillion, Vigo									
NONMETROPOLITAN COUNTIES					0	BR 1	BR 2	BR 3	BR 4	NONMETROPOLITAN COUNTIES									
					0	BR 1	BR 2	BR 3	BR 4	0		BR 1	BR 2	BR 3	BR 4				
Bartholomew.....					425	457	551	688	906	Benton.....					299	336	432	554	611
Blackford.....					299	336	444	555	623	Brown.....					299	397	523	726	752
Carroll.....					299	336	432	554	611	Cass.....					299	336	432	554	611
Crawford.....					299	336	432	554	611	Davies.....					299	336	432	554	611
Decatur.....					299	365	466	604	657	Dubois.....					299	336	432	554	629
Fayette.....					316	357	456	586	689	Fountain.....					299	336	432	554	611
Franklin.....					299	336	432	554	682	Fulton.....					329	346	432	580	611
Gibson.....					299	336	432	554	611	Grant.....					315	336	432	556	611
Greene.....					299	336	432	554	611	Henry.....					328	369	472	610	668
Jackson.....					367	385	475	628	675	Jasper.....					299	363	432	554	611
Jay.....					299	336	432	554	611	Jefferson.....					299	336	432	554	611

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jennings.....	312	336	432	554	611	Knox.....	329	364	472	600	662
Kosciusko.....	299	396	478	620	669	Lagrange.....	304	352	447	582	677
La Porte.....	304	368	493	631	689	Lawrence.....	299	336	432	558	611
Marshall.....	355	360	478	601	669	Martin.....	299	336	432	554	611
Miami.....	299	336	432	554	611	Montgomery.....	431	452	565	717	793
Newton.....	312	336	432	554	611	Noble.....	346	353	438	565	625
Orange.....	299	336	432	554	611	Owen.....	299	336	432	554	639
Parke.....	299	336	432	554	638	Perry.....	299	336	432	554	611
Pike.....	299	336	432	554	611	Pulaski.....	299	336	432	554	611
Putnam.....	325	378	465	625	630	Randolph.....	299	336	432	554	611
Ripley.....	299	336	432	564	639	Rush.....	307	336	432	554	639
Spencer.....	299	336	432	554	611	Starke.....	299	336	432	554	611
Steuben.....	366	412	494	618	689	Sullivan.....	299	336	432	554	611
Switzerland.....	299	336	432	554	611	Union.....	299	336	432	554	611
Wabash.....	299	336	432	554	611	Warren.....	299	336	432	554	611
Washington.....	299	336	432	554	611	Wayne.....	361	405	520	668	734
White.....	299	336	432	554	674						

I O W A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Cedar Rapids, IA MSA.....	293	413	531	738	793	Linn
Davenport-Moline-Rock Island, IA-IL MSA.....	300	414	512	662	718	Scott
Des Moines, IA MSA.....	416	525	649	841	884	Dallas, Polk, Warren
Dubuque, IA MSA.....	311	380	489	624	762	Dubuque
Iowa City, IA MSA.....	367	473	610	846	1000	Johnson
Omaha, NE-IA MSA.....	359	492	621	814	914	Pottawattamie
Sioux City, IA-NE MSA.....	365	439	547	682	779	Woodbury
Waterloo-Cedar Falls, IA MSA.....	342	438	547	728	856	Black Hawk

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adair.....	282	349	437	556	612	Adams.....	282	349	437	556	612
Allamakee.....	282	349	437	562	643	Appanoose.....	282	349	437	556	616
Audubon.....	282	349	437	556	612	Benton.....	289	349	437	556	612
Boone.....	282	370	437	562	666	Bremer.....	282	349	437	556	651
Buchanan.....	296	349	437	556	612	Buena Vista.....	297	349	437	556	612
Butler.....	299	349	437	556	612	Calhoun.....	282	349	437	556	612
Carroll.....	282	349	437	556	612	Cass.....	282	349	437	556	612
Cedar.....	282	354	437	556	612	Cerro Gordo.....	282	369	457	609	640
Cherokee.....	282	349	437	556	612	Chickasaw.....	282	349	437	556	612

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Clarke.....	289	349	437	556	612	Clay.....	282	349	437	556	612
Clayton.....	282	349	437	556	612	Clinton.....	282	349	444	556	621
Crawford.....	282	349	437	556	612	Davis.....	282	349	437	556	612
Decatur.....	282	349	437	556	612	Delaware.....	282	349	437	556	612
Des Moines.....	282	360	463	579	647	Dickinson.....	282	349	437	556	612
Emmet.....	282	349	437	556	647	Fayette.....	282	349	437	556	612
Floyd.....	307	349	437	556	612	Franklin.....	289	349	437	556	612
Fremont.....	310	349	437	556	645	Greene.....	282	349	437	556	612
Grundy.....	282	349	437	556	630	Guthrie.....	282	349	437	556	644
Hamilton.....	322	365	442	556	619	Hancock.....	282	349	437	556	612
Hardin.....	282	349	437	556	612	Harrison.....	282	349	437	556	612
Henry.....	282	358	454	568	643	Howard.....	282	349	437	556	640
Humboldt.....	282	349	437	556	612	Ida.....	289	349	437	556	612
Iowa.....	282	349	437	556	612	Jackson.....	282	349	440	556	616
Jasper.....	282	358	453	566	635	Jefferson.....	282	357	474	617	780
Jones.....	291	349	437	556	612	Keokuk.....	282	349	437	556	612
Kossuth.....	282	349	437	556	612	Lee.....	282	349	451	565	634
Louisa.....	282	349	437	556	612	Lucas.....	282	349	437	556	612
Lyon.....	282	349	437	556	612	Madison.....	282	349	455	582	639
Mahaska.....	282	349	437	556	612	Marion.....	282	388	474	594	666
Marshall.....	311	385	482	611	676	Mills.....	282	377	445	559	624
Mitchell.....	282	349	437	556	612	Monona.....	282	349	437	556	612
Monroe.....	282	367	437	556	645	Montgomery.....	310	351	437	556	612
Muscatine.....	322	399	529	705	739	O'Brien.....	282	349	437	556	612
Osceola.....	282	349	437	556	612	Page.....	282	349	437	556	612
Palo Alto.....	282	349	437	556	612	Plymouth.....	282	349	457	571	640
Pocahontas.....	282	349	437	556	612	Poweshiek.....	297	370	474	594	666
Ringgold.....	282	349	437	556	612	Sac.....	282	349	437	556	612
Shelby.....	282	349	437	556	612	Sioux.....	282	349	437	556	612
Story.....	367	446	527	728	835	Tama.....	282	349	437	556	612
Taylor.....	282	349	437	556	613	Union.....	282	349	437	556	645
Van Buren.....	282	349	437	556	612	Wapello.....	282	349	441	556	617
Washington.....	282	349	437	556	645	Wayne.....	282	349	437	556	612
Webster.....	282	349	444	559	622	Winnebago.....	282	355	437	556	612
Winneshiek.....	282	349	437	556	612	Worth.....	282	349	437	556	622
Wright.....	282	349	437	556	612						

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
METROPOLITAN FMR AREAS							
*Kansas City, MO-KS MSA.....	463	582	701	970	1075		Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA.....	378	453	580	808	930		Douglas
Topeka, KS MSA.....	354	408	531	718	809		Shawnee
*Wichita, KS MSA.....	370	444	594	804	868		Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Allen.....	287	326	418	539	600	Anderson.....	287	326	418	539	600
Atchison.....	287	326	418	539	643	Barber.....	287	326	418	539	600
Barton.....	287	326	418	539	600	Bourbon.....	287	326	418	539	600
Brown.....	287	326	418	539	600	Chase.....	287	326	418	539	600
Chautauqua.....	287	326	418	539	600	Cherokee.....	287	326	418	539	600
Cheyenne.....	287	326	418	539	600	Clark.....	287	326	418	539	600
Clay.....	287	326	418	539	600	Cloud.....	287	326	418	539	600
Coffey.....	296	326	418	539	627	Comanche.....	287	326	418	539	600
Cowley.....	307	326	418	553	600	Crawford.....	287	326	426	539	600
Decatur.....	287	326	418	539	600	Dickinson.....	287	326	418	539	600
Doniphan.....	287	326	418	539	600	Edwards.....	287	326	418	539	600
Elk.....	287	326	418	539	600	Ellis.....	287	326	418	539	600
Ellsworth.....	287	326	418	539	600	Finney.....	377	402	516	672	849
Ford.....	330	391	486	612	689	Franklin.....	323	339	437	560	682
Geary.....	354	371	465	600	650	Gove.....	287	326	418	539	600
Graham.....	287	326	418	539	600	Grant.....	297	378	433	593	646
Gray.....	287	326	418	539	600	Greeley.....	287	326	418	539	600
Greenwood.....	287	326	418	539	600	Hamilton.....	287	326	418	539	600
Harper.....	287	326	418	539	600	Haskell.....	287	333	418	539	600
Hodgeman.....	287	326	418	539	600	Jackson.....	287	326	418	539	600
Jefferson.....	287	326	426	565	600	Jewell.....	287	326	418	539	600
Kearny.....	320	326	430	578	636	Kingman.....	287	326	418	539	600
Kiowa.....	287	326	418	539	600	Labette.....	287	326	418	539	600
Lane.....	287	326	418	539	600	Lincoln.....	287	326	418	539	600
Linn.....	287	326	418	539	600	Logan.....	287	326	418	539	600
Lyon.....	287	326	418	539	640	Mcpherson.....	289	326	418	539	600
Marion.....	287	326	418	539	600	Marshall.....	287	326	418	539	600
Meade.....	287	326	418	539	600	Mitchell.....	287	326	418	539	600
Montgomery.....	287	326	418	539	600	Morris.....	287	326	418	539	600
Morton.....	287	351	418	539	600	Nemaha.....	287	326	418	539	600
Neosho.....	287	326	418	539	600	Ness.....	287	326	418	539	600
Norton.....	287	326	418	539	600	Osage.....	287	326	418	539	600
Osborne.....	287	326	418	539	601	Ottawa.....	287	326	418	539	600
Pawnee.....	287	326	418	539	600	Phillips.....	287	326	418	539	600

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie.....	287	326	418	539	613	Pratt.....	287	326	418	551	600
Rawlins.....	287	326	418	539	600	Reno.....	287	326	418	539	651
Republic.....	287	326	418	539	600	Rice.....	287	326	418	539	600
Riley.....	357	393	523	652	793	Rooks.....	287	326	418	539	600
Rush.....	287	326	418	539	600	Russell.....	287	326	418	539	600
Saline.....	376	389	512	708	716	Scott.....	287	326	418	551	633
Seward.....	347	378	502	630	702	Sheridan.....	287	326	418	539	600
Sherman.....	287	326	418	539	600	Smith.....	287	326	418	539	600
Stafford.....	287	326	418	539	600	Stanton.....	287	326	418	539	600
Stevens.....	287	327	418	539	616	Sumner.....	287	326	418	565	600
Thomas.....	287	326	418	539	600	Trego.....	287	326	418	539	600
Wabaunsee.....	287	326	418	539	600	Wallace.....	287	326	418	539	600
Washington.....	287	326	418	539	600	Wichita.....	287	326	430	539	670
Wilson.....	287	326	418	539	600	Woodson.....	287	326	418	539	600

K E N T U C K Y

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Cincinnati, OH-KY-IN.....	386	495	662	887	958	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA.....	364	407	479	652	671	Christian
Evansville-Henderson, IN-KY MSA.....	342	407	529	660	739	Henderson
Gallatin County, KY.....	290	395	484	607	792	Gallatin
Grant County, KY.....	289	344	455	635	752	Grant
Huntington-Ashland, WV-KY-OH MSA.....	325	381	469	598	659	Boyd, Carter, Greenup
Lexington, KY MSA.....	369	459	563	766	866	Bourbon, Clark, Fayette, Jessamine, Madison, Scott
Louisville, KY-IN MSA.....	368	473	581	801	845	Bullitt, Jefferson, Oldham
Owensboro, KY MSA.....	322	333	438	587	615	Daviess
Pendleton County, KY.....	291	338	448	564	631	Pendleton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair.....	265	324	383	507	557	Allen.....	265	310	383	495	557
Anderson.....	292	310	401	501	562	Ballard.....	265	310	383	495	557
Barren.....	265	321	383	495	557	Bath.....	265	310	383	495	557
Bell.....	265	310	387	495	557	Boyle.....	316	320	427	535	599
Bracken.....	265	310	383	495	557	Breathitt.....	265	310	383	495	557
Breckinridge.....	265	310	383	495	557	Butler.....	265	310	383	495	557
Caldwell.....	265	310	383	495	557	Calloway.....	265	310	383	495	557
Carlisle.....	265	310	383	495	557	Carroll.....	265	310	383	495	557
Casey.....	265	310	383	495	557	Clay.....	265	310	383	495	557
Clinton.....	265	310	383	495	557	Crittenden.....	265	310	383	495	557

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Cumberland.....	265	310	383	495	557	Edmonson.....	265	310	383	495	557
Elliott.....	265	310	383	495	557	Estill.....	265	310	383	495	557
Fleming.....	265	310	383	495	557	Floyd.....	280	340	383	532	610
Franklin.....	265	391	479	618	780	Fulton.....	265	310	383	495	557
Garrard.....	265	310	383	495	557	Graves.....	265	310	383	495	557
Grayson.....	265	310	383	495	557	Green.....	265	310	383	495	557
Hancock.....	265	310	383	500	592	Hardin.....	330	339	424	570	676
Harlan.....	265	403	459	600	708	Harrison.....	265	311	393	495	606
Hart.....	265	310	383	495	557	Henry.....	265	310	383	495	557
Hickman.....	265	310	383	495	557	Hopkins.....	265	310	383	495	562
Jackson.....	265	310	383	495	557	Johnson.....	265	310	383	495	557
Knott.....	265	310	383	495	557	Knox.....	265	367	469	589	723
Larue.....	265	310	383	495	557	Laurel.....	346	392	464	626	650
Lawrence.....	265	310	383	495	557	Lee.....	265	310	383	495	557
Leslie.....	265	310	383	495	557	Letcher.....	265	310	383	495	557
Lewis.....	265	310	383	495	557	Lincoln.....	265	310	383	495	557
Livingston.....	307	310	412	573	577	Logan.....	265	310	383	505	557
Lyon.....	265	310	383	495	557	McCracken.....	301	323	404	517	664
McCreary.....	265	310	383	495	557	McLean.....	265	310	383	495	557
Magoffin.....	265	310	383	495	557	Marion.....	265	310	383	495	557
Marshall.....	265	316	383	495	596	Martin.....	265	310	383	495	557
Mason.....	265	310	383	495	557	Meade.....	275	341	393	518	647
Menifee.....	265	310	383	495	557	Mercer.....	265	310	383	505	557
Metcalfe.....	265	310	383	495	557	Monroe.....	265	310	383	495	557
Montgomery.....	265	310	383	495	557	Morgan.....	265	310	383	495	557
Muhlenberg.....	265	310	383	495	557	Nelson.....	291	310	395	495	557
Nicholas.....	265	310	383	495	557	Ohio.....	265	310	383	495	557
Owen.....	265	310	383	495	570	Owsley.....	265	310	383	495	557
Perry.....	297	310	399	499	559	Pike.....	285	325	395	495	585
Powell.....	265	310	383	495	557	Pulaski.....	291	310	393	496	557
Robertson.....	265	310	383	495	557	Rockcastle.....	265	310	383	495	557
Rowan.....	265	310	383	495	577	Russell.....	265	310	383	495	557
Shelby.....	266	350	393	548	557	Simpson.....	265	332	389	496	557
Spencer.....	265	316	383	495	557	Taylor.....	320	379	424	567	642
Todd.....	265	310	383	495	557	Trigg.....	265	310	383	495	557
Trimble.....	265	310	383	495	557	Union.....	265	310	383	495	557
Warren.....	265	343	458	572	662	Washington.....	265	314	383	495	557
Wayne.....	265	310	383	495	557	Webster.....	265	310	383	495	557
Whitley.....	265	310	383	495	557	Wolfe.....	265	310	383	495	557

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

L O U I S I A N A

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS	0	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Alexandria, LA MSA.....	301	376	471	653	664		Rapides
*Baton Rouge, LA MSA.....	346	429	533	739	873		Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA.....	297	347	445	617	731		Lafourche, Terrebonne
Lafayette, LA MSA.....	314	362	430	592	701		Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA.....	346	402	510	668	836		Calcasieu
Monroe, LA MSA.....	325	364	485	654	679		Ouachita
New Orleans, LA.....	461	529	659	896	1085		Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles
St. James Parish, LA.....	296	335	446	555	622		St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA.....	366	417	522	699	858		St. James
							Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES						NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Allen.....	287	312	385	504	562	Assumption.....	314	338	401	504	562
Avoyelles.....	287	312	385	504	565	Beauregard.....	350	382	452	590	651
Bienville.....	287	312	385	511	604	Caldwell.....	287	312	385	504	562
Cameron.....	287	312	385	504	562	Catahoula.....	287	312	385	504	562
Claiborne.....	287	312	385	504	562	Concordia.....	287	312	385	504	562
De Soto.....	287	312	385	504	567	East Carroll.....	287	312	385	504	562
East Feliciana.....	287	312	385	504	562	Evangeline.....	287	312	385	504	562
Franklin.....	287	312	385	504	567	Grant.....	287	312	385	504	562
Iberia.....	304	316	393	504	562	Iberville.....	287	312	385	504	579
Jackson.....	287	312	385	504	562	Jefferson Davis.....	287	312	385	504	571
La Salle.....	287	312	385	504	567	Lincoln.....	338	340	424	582	698
Madison.....	287	312	385	504	562	Morehouse.....	287	312	385	504	562
Natchitoches.....	307	314	407	563	567	Pointe Coupee.....	287	312	385	504	610
Red River.....	287	312	385	504	567	Richland.....	287	312	385	504	567
Sabine.....	287	320	385	504	593	St. Helena.....	287	312	385	504	562
St. Mary.....	314	337	423	577	602	Tangipahoa.....	308	320	412	540	575
Tensas.....	287	312	385	504	562	Union.....	287	312	385	504	567
Vermilion.....	287	312	385	504	562	Vernon.....	330	368	419	543	641
Washington.....	287	312	385	504	562	West Carroll.....	287	312	385	504	562
West Feliciana.....	287	375	501	626	703	Winn.....	287	312	385	504	562

M A I N E

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							
	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Bangor, ME MSA.....	376	459	588	769	825		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

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E continued

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Lewiston-Auburn, ME MSA.....	346	418	537	672	763		Waldo county towns of Winterport town Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls town Poland town, Sabattus town, Turner town, Wales town Cumberland county towns of Cape Elizabeth town, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth town Portland city, Raymond town, Scarborough town South Portland city, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town
Portland, ME MSA.....	498	642	845	1058	1184		Towns within non metropolitan counties
Portsmouth-Rochester, NH-ME PMSA.....	573	686	882	1132	1388		Durham town, Leeds town, Livermore town Livermore Falls to, Minot town Baldwin town, Bridgton town, Brunswick town Harpwell town, Harrison town, Naples town New Gloucester town, Pownal town, Sebago town
NONMETROPOLITAN COUNTIES							
Androscoggin.....	348	431	571	714	800		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, Sebobeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Aroostook.....	348	409	524	666	767		
Cumberland.....	510	520	692	940	1080		
Franklin.....	355	409	524	666	767		
Hancock.....	375	460	569	717	796		
Kennebec.....	362	453	543	683	767		
Knox.....	348	448	582	777	817		
Lincoln.....	454	504	573	797	940		
Oxford.....	348	409	524	666	767		
Penobscot.....	348	409	524	666	767		

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E continued

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR Towns within non metropolitan counties

Piscataquis..... 348 409 524 566 767
 Sagadahoc..... 490 560 692 921 1136
 Somerset..... 365 416 524 566 787
 Waldo..... 348 409 524 566 767

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..... 348 409 524 566 767
 York..... 431 492 659 824 923

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

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Baltimore, MD..... 566 691 844 1117 1278 Anne Arundel, Baltimore, Carroll, Harford, Howard
 Queen Anne's, Baltimore city
 Columbia
 Cumberland, MD-WV MSA..... 608 817 952 1259 1572 Allegany
 Hagerstown, MD PMSA..... 359 432 535 707 807 Washington
 *Washington, DC-MD-VA..... 382 459 573 749 855 Calvert, Charles, Frederick, Montgomery, Prince George's
 Wilmington-Newark, DE-MD PMSA..... 748 851 999 1360 1642 Cecil
 490 645 752 1022 1235

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Caroline..... 396 427 534 700 795
 Garrett..... 354 474 534 696 877
 St. Mary's..... 577 685 790 1102 1259
 Talbot..... 468 496 660 827 1084
 Worcester..... 354 427 535 742 795

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Dorchester..... 354 457 534 696 795
 Kent..... 358 441 589 735 886
 Somerset..... 422 473 534 740 876
 Wicomico..... 398 460 594 755 832

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Barnstable-Yarmouth, MA MSA..... 532 712 951 1192 1334 Barnstable county towns of Barnstable town, Brewster town
 Chatham town, Dennis town, Eastham town, Harwich town
 Mashpee town, Orleans town, Sandwich town, Yarmouth town

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 042202

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S A C H U S E T T S continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Boston, MA-NH PMSA.....	953	1074	1343	1680	1972	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.....	536	705	865	1075	1227	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

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S A C H U S E T T S continued

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Fitchburg-Leominster, MA MSA.....	418	588	764	982	1067		Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminister town, Winchendon town 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 Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
Lawrence, MA-NH PMSA.....	579	700	881	1100	1353		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
Lowell, MA-NH PMSA.....	588	759	917	1149	1285		Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
New Bedford, MA PMSA.....	562	686	781	976	1096		Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town 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
Pittsfield, MA MSA.....	347	493	607	762	943		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 Williamburg town
Providence-Fall River-Warwick, RI-MA MSA.....	407	555	667	837	1032		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
Springfield, MA MSA.....	432	535	674	843	1037		
Worcester, MA-CT PMSA.....	521	629	785	980	1099		

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 042202

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T S continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Uxbridge town, Webster town, Westborough town
West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR Towns within non metropolitan counties

Barnstable..... 519 712 947 1185 1328 Bourne town, Falmouth town, Provincetown town
 Truro town, Wellfleet town
 Berkshire..... 413 502 592 812 973 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..... 700 713 948 1186 1331
 Franklin..... 445 552 706 884 1068

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..... 449 613 817 1087 1341
 Hampshire..... 630 637 850 1067 1193

Blandford town, Brimfield town, Chester town
 Granville town, Tolland town, Wales town
 Chesterfield town, Cummington town, Goshen town
 Middlefield town, Pelham town, Plainfield town
 Westhampton town, Worthington town

Nantucket..... 796 1067 1423 1778 1991
 Worcester..... 501 523 696 872 975

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

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Ann Arbor, MI PMSA..... 526 635 785 1030 1155 Lenawee, Livingston, Washtenaw
 Benton Harbor, MI MSA..... 404 410 538 671 753 Berrien
 *Detroit, MI PMSA..... 470 638 771 964 1080 Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
 Flint, MI PMSA..... 410 464 584 744 816 Genesee
 *Grand Rapids-Muskegon-Holland, MI MSA..... 442 517 632 791 886 Allegan, Kent, Muskegon, Ottawa

Jackson, MI MSA..... 318 428 543 677 759 Jackson
 Kalamazoo-Battle Creek, MI MSA..... 377 455 572 717 801 Calhoun, Kalamazoo, Van Buren
 Lansing-East Lansing, MI MSA..... 424 499 645 843 973 Clinton, Eaton, Ingham

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

METROPOLITAN FMR AREAS

Saginaw-Bay City-Midland, MI MSA.....		371		408		543		677		759		Bay, Midland, Saginaw	
0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR	
NONMETROPOLITAN COUNTIES		NONMETROPOLITAN COUNTIES		NONMETROPOLITAN COUNTIES		NONMETROPOLITAN COUNTIES		NONMETROPOLITAN COUNTIES		NONMETROPOLITAN COUNTIES		NONMETROPOLITAN COUNTIES	
Alcona.....	308 353 446 580 661	Alcona.....	308 353 446 580 661	Alcona.....	308 353 446 580 661	Alcona.....	308 353 446 580 661	Alcona.....	308 353 446 580 661	Alcona.....	308 353 446 580 661	Alcona.....	308 353 446 580 661
Alpena.....	308 353 446 580 661	Alpena.....	308 353 446 580 661	Alpena.....	308 353 446 580 661	Alpena.....	308 353 446 580 661	Alpena.....	308 353 446 580 661	Alpena.....	308 353 446 580 661	Alpena.....	308 353 446 580 661
Arenac.....	308 353 446 580 661	Arenac.....	308 353 446 580 661	Arenac.....	308 353 446 580 661	Arenac.....	308 353 446 580 661	Arenac.....	308 353 446 580 661	Arenac.....	308 353 446 580 661	Arenac.....	308 353 446 580 661
Barry.....	308 380 506 636 712	Barry.....	308 380 506 636 712	Barry.....	308 380 506 636 712	Barry.....	308 380 506 636 712	Barry.....	308 380 506 636 712	Barry.....	308 380 506 636 712	Barry.....	308 380 506 636 712
Branch.....	358 366 449 615 661	Branch.....	358 366 449 615 661	Branch.....	358 366 449 615 661	Branch.....	358 366 449 615 661	Branch.....	358 366 449 615 661	Branch.....	358 366 449 615 661	Branch.....	358 366 449 615 661
Charlevoix.....	375 379 481 654 677	Charlevoix.....	375 379 481 654 677	Charlevoix.....	375 379 481 654 677	Charlevoix.....	375 379 481 654 677	Charlevoix.....	375 379 481 654 677	Charlevoix.....	375 379 481 654 677	Charlevoix.....	375 379 481 654 677
Chippewa.....	308 353 446 580 661	Chippewa.....	308 353 446 580 661	Chippewa.....	308 353 446 580 661	Chippewa.....	308 353 446 580 661	Chippewa.....	308 353 446 580 661	Chippewa.....	308 353 446 580 661	Chippewa.....	308 353 446 580 661
Crawford.....	337 353 456 623 661	Crawford.....	337 353 456 623 661	Crawford.....	337 353 456 623 661	Crawford.....	337 353 456 623 661	Crawford.....	337 353 456 623 661	Crawford.....	337 353 456 623 661	Crawford.....	337 353 456 623 661
Dickinson.....	308 379 468 585 661	Dickinson.....	308 379 468 585 661	Dickinson.....	308 379 468 585 661	Dickinson.....	308 379 468 585 661	Dickinson.....	308 379 468 585 661	Dickinson.....	308 379 468 585 661	Dickinson.....	308 379 468 585 661
Gladwin.....	308 353 446 580 661	Gladwin.....	308 353 446 580 661	Gladwin.....	308 353 446 580 661	Gladwin.....	308 353 446 580 661	Gladwin.....	308 353 446 580 661	Gladwin.....	308 353 446 580 661	Gladwin.....	308 353 446 580 661
Grand Traverse.....	408 438 584 730 820	Grand Traverse.....	408 438 584 730 820	Grand Traverse.....	408 438 584 730 820	Grand Traverse.....	408 438 584 730 820	Grand Traverse.....	408 438 584 730 820	Grand Traverse.....	408 438 584 730 820	Grand Traverse.....	408 438 584 730 820
Hillsdale.....	308 353 446 580 661	Hillsdale.....	308 353 446 580 661	Hillsdale.....	308 353 446 580 661	Hillsdale.....	308 353 446 580 661	Hillsdale.....	308 353 446 580 661	Hillsdale.....	308 353 446 580 661	Hillsdale.....	308 353 446 580 661
Huron.....	308 353 446 580 661	Huron.....	308 353 446 580 661	Huron.....	308 353 446 580 661	Huron.....	308 353 446 580 661	Huron.....	308 353 446 580 661	Huron.....	308 353 446 580 661	Huron.....	308 353 446 580 661
Iosco.....	308 353 446 580 700	Iosco.....	308 353 446 580 700	Iosco.....	308 353 446 580 700	Iosco.....	308 353 446 580 700	Iosco.....	308 353 446 580 700	Iosco.....	308 353 446 580 700	Iosco.....	308 353 446 580 700
Isabella.....	346 368 493 665 808	Isabella.....	346 368 493 665 808	Isabella.....	346 368 493 665 808	Isabella.....	346 368 493 665 808	Isabella.....	346 368 493 665 808	Isabella.....	346 368 493 665 808	Isabella.....	346 368 493 665 808
Keweenaw.....	308 353 446 580 661	Keweenaw.....	308 353 446 580 661	Keweenaw.....	308 353 446 580 661	Keweenaw.....	308 353 446 580 661	Keweenaw.....	308 353 446 580 661	Keweenaw.....	308 353 446 580 661	Keweenaw.....	308 353 446 580 661
Leelanaw.....	419 452 530 691 868	Leelanaw.....	419 452 530 691 868	Leelanaw.....	419 452 530 691 868	Leelanaw.....	419 452 530 691 868	Leelanaw.....	419 452 530 691 868	Leelanaw.....	419 452 530 691 868	Leelanaw.....	419 452 530 691 868
Mackinac.....	308 353 446 580 661	Mackinac.....	308 353 446 580 661	Mackinac.....	308 353 446 580 661	Mackinac.....	308 353 446 580 661	Mackinac.....	308 353 446 580 661	Mackinac.....	308 353 446 580 661	Mackinac.....	308 353 446 580 661
Marquette.....	308 353 446 580 661	Marquette.....	308 353 446 580 661	Marquette.....	308 353 446 580 661	Marquette.....	308 353 446 580 661	Marquette.....	308 353 446 580 661	Marquette.....	308 353 446 580 661	Marquette.....	308 353 446 580 661
Mecosta.....	308 353 446 604 717	Mecosta.....	308 353 446 604 717	Mecosta.....	308 353 446 604 717	Mecosta.....	308 353 446 604 717	Mecosta.....	308 353 446 604 717	Mecosta.....	308 353 446 604 717	Mecosta.....	308 353 446 604 717
Missaukee.....	325 353 446 580 661	Missaukee.....	325 353 446 580 661	Missaukee.....	325 353 446 580 661	Missaukee.....	325 353 446 580 661	Missaukee.....	325 353 446 580 661	Missaukee.....	325 353 446 580 661	Missaukee.....	325 353 446 580 661
Montmorency.....	308 353 446 580 661	Montmorency.....	308 353 446 580 661	Montmorency.....	308 353 446 580 661	Montmorency.....	308 353 446 580 661	Montmorency.....	308 353 446 580 661	Montmorency.....	308 353 446 580 661	Montmorency.....	308 353 446 580 661
Oceana.....	329 353 446 580 661	Oceana.....	329 353 446 580 661	Oceana.....	329 353 446 580 661	Oceana.....	329 353 446 580 661	Oceana.....	329 353 446 580 661	Oceana.....	329 353 446 580 661	Oceana.....	329 353 446 580 661
Ontonagon.....	308 353 446 580 661	Ontonagon.....	308 353 446 580 661	Ontonagon.....	308 353 446 580 661	Ontonagon.....	308 353 446 580 661	Ontonagon.....	308 353 446 580 661	Ontonagon.....	308 353 446 580 661	Ontonagon.....	308 353 446 580 661
Oscoda.....	308 353 446 580 661	Oscoda.....	308 353 446 580 661	Oscoda.....	308 353 446 580 661	Oscoda.....	308 353 446 580 661	Oscoda.....	308 353 446 580 661	Oscoda.....	308 353 446 580 661	Oscoda.....	308 353 446 580 661
Presque Isle.....	308 353 446 580 661	Presque Isle.....	308 353 446 580 661	Presque Isle.....	308 353 446 580 661	Presque Isle.....	308 353 446 580 661	Presque Isle.....	308 353 446 580 661	Presque Isle.....	308 353 446 580 661	Presque Isle.....	308 353 446 580 661
St. Joseph.....	308 360 446 582 661	St. Joseph.....	308 360 446 582 661	St. Joseph.....	308 360 446 582 661	St. Joseph.....	308 360 446 582 661	St. Joseph.....	308 360 446 582 661	St. Joseph.....	308 360 446 582 661	St. Joseph.....	308 360 446 582 661
Schoolcraft.....	308 353 446 580 661	Schoolcraft.....	308 353 446 580 661	Schoolcraft.....	308 353 446 580 661	Schoolcraft.....	308 353 446 580 661	Schoolcraft.....	308 353 446 580 661	Schoolcraft.....	308 353 446 580 661	Schoolcraft.....	308 353 446 580 661
Tuscola.....	335 366 488 611 682	Tuscola.....	335 366 488 611 682	Tuscola.....	335 366 488 611 682	Tuscola.....	335 366 488 611 682	Tuscola.....	335 366 488 611 682	Tuscola.....	335 366 488 611 682	Tuscola.....	335 366 488 611 682

M I N N E S O T A

METROPOLITAN FMR AREAS

Duluth-Superior, MN-WI MSA.....		300		386		496		662		771		St. Louis	
0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR		0 BR 1 BR 2 BR 3 BR 4 BR	
Fargo-Moorhead, ND-MN MSA.....		366		504		609		846		905		Clay	
Grand Forks, ND-MN MSA.....		379		451		594		819		914		Polk	

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

La Crosse, WI-MN MSA..... 304 391 498 666 807 Houston
 *Minneapolis-St. Paul, MN-WI MSA..... 554 713 912 1233 1397 Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey
 Scott, Sherburne, Washington, Wright
 Rochester, MN MSA..... 349 490 641 887 996 Olmsted
 St. Cloud, MN MSA..... 347 450 531 670 855 Benton, Stearns

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Aitkin..... 287 372 496 622 693
 Beltrami..... 283 363 485 636 679
 Blue Earth..... 387 466 581 745 944
 Carlton..... 283 346 438 548 627
 Chippewa..... 283 346 438 548 627
 Cook..... 335 346 450 616 641
 Crow Wing..... 283 346 460 576 723
 Douglas..... 283 346 438 548 627
 Fillmore..... 283 346 438 548 627
 Goodhue..... 327 421 560 716 785
 Hubbard..... 289 346 438 548 627
 Jackson..... 283 346 438 548 627
 Kandiyohi..... 350 441 537 673 810
 Koochiching..... 343 350 464 580 760
 Lake..... 283 346 438 548 627
 Le Sueur..... 283 346 438 548 676
 Lyon..... 283 346 438 548 649
 Mahnomen..... 283 346 438 548 627
 Martin..... 283 346 438 548 627
 Mille Lacs..... 370 425 541 753 887
 Mower..... 283 346 438 548 627
 Nicollet..... 356 379 505 670 710
 Norman..... 283 346 438 548 627
 Pennington..... 283 346 438 585 627
 Pipestone..... 283 346 438 548 627
 Red Lake..... 283 358 438 548 627
 Renville..... 283 346 438 548 627
 Rock..... 283 346 438 548 627
 Sibley..... 283 346 438 548 627
 Stevens..... 322 407 460 576 645
 Todd..... 283 346 438 548 627
 Wabasha..... 306 373 472 592 677
 Waseca..... 369 405 514 645 737

Becker..... 283 406 457 572 641
 Big Stone..... 283 346 438 548 627
 Brown..... 283 366 438 548 627
 Cass..... 283 346 438 548 627
 Clearwater..... 283 346 438 548 627
 Cottonwood..... 283 346 438 548 627
 Dodge..... 283 346 438 548 627
 Faribault..... 283 346 438 548 627
 Freeborn..... 283 346 446 587 629
 Grant..... 283 346 438 548 627
 Itasca..... 363 367 479 597 670
 Kanabec..... 350 442 572 714 801
 Kittson..... 283 346 438 548 627
 Lac qui Parle..... 283 346 438 548 627
 Lake of the Woods..... 283 346 438 548 627
 Lincoln..... 283 346 438 548 627
 Mcleod..... 336 434 578 718 806
 Marshall..... 283 346 438 548 627
 Meeker..... 337 397 503 632 722
 Morrison..... 314 346 438 548 627
 Murray..... 283 346 438 548 627
 Nobles..... 283 346 438 548 627
 Otter Tail..... 283 346 438 548 627
 Pine..... 359 396 503 633 720
 Pope..... 283 346 438 548 627
 Redwood..... 283 346 438 548 627
 Rice..... 335 459 613 763 855
 Roseau..... 343 350 458 590 643
 Steele..... 335 390 519 648 726
 Swift..... 283 346 438 548 627
 Traverse..... 283 346 438 548 627
 Wadena..... 283 346 438 548 627
 Watonwan..... 283 346 438 548 627

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR
Wilkin.....	283	346	438	548	627		Winona.....	330	431	545	681	763	
Yellow Medicine.....	283	346	438	548	627								

MISSISSIPPI

METROPOLITAN FMR AREAS

Counties of FMR AREA within STATE													
	0	BR 1	BR 2	BR 3	BR 4	BR		0	BR 1	BR 2	BR 3	BR 4	BR
Biloxi-Gulfport-Pascagoula, MS MSA.....	423	496	571	795	938		Hancock, Harrison, Jackson						
Hattiesburg, MS MSA.....	319	390	478	642	765		Forrest, Lamar						
Jackson, MS MSA.....	421	480	587	781	824		Hinds, Madison, Rankin						
Memphis, TN-AR-MS MSA.....	456	532	624	867	910		Desoto						

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I P P I continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4
Stone.....	264	314	389	500	562	Sunflower.....	292	318	389	500
Tallahatchie.....	264	314	389	500	562	Tate.....	264	357	412	517
Tippah.....	264	314	389	500	562	Tishomingo.....	264	314	389	500
Tunica.....	264	314	389	500	562	Union.....	264	314	389	500
Walthall.....	264	314	389	500	562	Warren.....	264	345	431	596
Washington.....	286	340	454	587	647	Wayne.....	264	314	389	500
Webster.....	266	314	389	500	562	Wilkinson.....	264	314	389	500
Winston.....	264	314	389	500	562	Yalobusha.....	266	314	389	500
Yazoo.....	268	314	389	500	562					

M I S S O U R I

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Columbia, MO MSA.....	278	392	510	709	836	Boone
Joplin, MO MSA.....	271	314	417	549	590	Jasper, Newton
*Kansas City, MO-KS MSA.....	463	582	701	970	1075	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA.....	261	316	422	533	592	Andrew, Buchanan
*St. Louis, MO-IL MSA.....	415	505	655	853	942	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln
Springfield, MO MSA.....	285	361	467	646	671	St. Charles, St. Louis, Warren, St. Louis city
						St. Christian, Greene, Webster

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adair.....	254	318	421	531	637	Atchison.....	254	292	377	489	562
Audrain.....	272	292	377	509	589	Barry.....	254	303	377	489	562
Barton.....	254	292	377	489	562	Bates.....	254	292	377	489	572
Benton.....	286	292	390	489	562	Bollinger.....	254	292	377	489	562
Butler.....	254	292	377	489	562	Caldwell.....	254	294	397	496	562
Callaway.....	299	305	405	515	667	Camden.....	334	338	451	627	737
Cape Girardeau.....	262	322	428	570	699	Carroll.....	254	292	377	489	562
Carter.....	254	292	377	489	562	Cedar.....	254	292	377	489	562
Chariton.....	254	292	377	489	562	Clark.....	254	292	377	489	562
Cole.....	254	335	447	597	626	Cooper.....	254	292	377	489	562
Crawford.....	279	335	378	498	562	Dade.....	254	292	377	489	562
Dallas.....	254	292	377	489	562	Davess.....	254	292	377	489	562
Dekalb.....	263	292	377	495	562	Dent.....	254	292	377	489	562
Douglas.....	254	292	377	489	562	Dunklin.....	254	292	377	489	562
Gasconade.....	254	292	377	489	562	Gentry.....	254	292	377	489	562
Grundy.....	254	292	377	489	562	Harrison.....	254	292	377	489	562
Henry.....	289	294	394	493	647	Hickory.....	254	292	377	489	562
Holt.....	254	292	377	489	562	Howard.....	254	292	377	489	562
Howell.....	254	292	377	489	562	Iron.....	254	292	377	489	562

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES						NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Johnson.....	306	341	445	590	697	Knox.....	254	292	377	489	562
Laclede.....	254	292	377	493	562	Lawrence.....	270	299	377	489	562
Lewis.....	254	292	377	489	562	Linn.....	254	292	377	489	562
Livingston.....	254	292	378	489	562	McDonald.....	254	292	377	489	562
Macon.....	274	315	404	526	603	Madison.....	254	292	377	489	562
Maries.....	254	292	377	489	562	Marion.....	254	292	377	489	562
Mercer.....	254	292	377	489	562	Miller.....	279	335	377	493	582
Mississippi.....	254	292	377	489	562	Moniteau.....	254	292	377	489	562
Monroe.....	254	292	377	489	562	Montgomery.....	270	310	398	518	594
Morgan.....	254	292	377	489	562	New Madrid.....	254	292	377	489	562
Nodaway.....	269	325	400	508	612	Oregon.....	254	292	377	489	562
Osage.....	254	292	377	489	562	Ozark.....	254	292	377	489	562
Pemiscot.....	254	292	377	489	562	Perry.....	308	313	418	557	586
Pettis.....	273	320	428	538	644	Phelps.....	263	316	404	549	596
Pike.....	254	292	377	489	591	Polk.....	254	293	377	489	589
Pulaski.....	254	357	400	530	591	Putnam.....	254	292	377	489	562
Ralls.....	254	292	377	489	562	Randolph.....	254	292	377	489	562
Reynolds.....	254	292	377	489	562	Ripley.....	254	292	377	489	562
St. Clair.....	254	292	377	489	562	Ste. Genevieve.....	254	303	390	498	632
St. Francois.....	279	351	444	557	730	Saline.....	254	292	388	489	562
Schuyler.....	254	292	377	489	562	Scotland.....	254	292	377	489	562
Scott.....	306	308	412	556	640	Shannon.....	254	292	377	489	562
Shelby.....	254	292	377	489	562	Stoddard.....	254	292	377	489	562
Stone.....	294	314	391	498	562	Sullivan.....	254	292	377	489	562
Taney.....	287	318	416	562	660	Texas.....	254	292	377	489	562
Vernon.....	254	292	377	501	562	Washington.....	296	360	403	504	565
Wayne.....	254	292	377	489	562	Worth.....	254	292	377	489	562
Wright.....	254	292	377	489	562						

M O N T A N A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Billings, MT MSA.....	357	415	554	745	904	Yellowstone
Great Falls, MT MSA.....	357	413	544	708	843	Cascade
Missoula, MT MSA.....	357	419	557	719	914	Missoula

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M O N T A N A continued

NONMETROPOLITAN COUNTIES						0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES						0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead.....	321	370	489	634	741		Big Horn.....	321	370	489	634	741									
Blaine.....	321	370	489	634	741		Broadwater.....	321	370	489	634	741									
Carbon.....	365	427	555	723	843		Carter.....	321	392	489	634	741									
Chouteau.....	321	370	489	634	741		Custer.....	321	370	489	634	741									
Daniels.....	321	392	489	634	741		Dawson.....	321	370	489	634	741									
Deer Lodge.....	321	370	489	634	741		Fallon.....	321	370	489	634	741									
Fergus.....	321	370	489	634	741		Flathead.....	321	371	496	693	814									
Gallatin.....	394	461	618	793	1014		Garfield.....	321	370	489	634	741									
Glacier.....	321	370	489	634	741		Golden Valley.....	321	391	489	634	741									
Granite.....	321	370	489	634	741		Hill.....	331	370	489	634	741									
Jefferson.....	338	370	489	634	741		Judith Basin.....	321	392	489	634	741									
Lake.....	348	370	489	634	741		Lewis and Clark.....	357	417	554	770	913									
Liberty.....	321	370	489	634	741		Lincoln.....	348	370	489	634	741									
Mccone.....	321	390	489	634	741		Madison.....	328	370	489	634	741									
Meagher.....	321	392	489	634	741		Mineral.....	321	370	489	634	757									
Musselshell.....	326	370	489	634	741		Park.....	321	370	489	634	750									
Petroleum.....	321	370	489	634	741		Phillips.....	321	370	489	634	741									
Pondera.....	321	391	489	634	741		Powder River.....	321	375	489	634	741									
Powell.....	326	370	489	634	741		Prairie.....	321	370	489	634	741									
Ravalli.....	321	370	489	634	741		Richland.....	321	400	489	634	741									
Roosevelt.....	335	370	489	634	741		Rosebud.....	321	370	489	634	741									
Sanders.....	321	370	489	634	741		Sheridan.....	330	370	489	634	741									
Silver Bow.....	321	370	489	634	741		Stillwater.....	328	370	489	634	741									
Sweet Grass.....	345	370	489	634	741		Teton.....	321	370	489	634	741									
Toole.....	328	370	489	634	741		Treasure.....	321	370	489	634	741									
Valley.....	321	370	489	634	741		Wheatland.....	321	370	489	634	741									
Wibaux.....	321	392	489	634	741																

N E B R A S K A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Lincoln, NE MSA.....	334	427	564	748	874	Lancaster
Omaha, NE-IA MSA.....	359	492	621	814	914	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA.....	365	439	547	682	779	Dakota

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	BR
Adams.....	264	354	467	586	701	Antelope.....	253	343	416	535	605
Arthur.....	253	326	416	532	605	Banner.....	253	326	416	533	605
Blaine.....	253	326	416	532	605	Boone.....	253	326	416	532	630
Box Butte.....	275	326	416	533	629	Boyd.....	253	340	416	532	605
Brown.....	253	326	416	532	617	Buffalo.....	273	395	495	617	747
Burt.....	253	326	416	532	605	Butler.....	253	326	416	532	605
Cedar.....	253	326	416	532	605	Chase.....	253	344	416	532	635
Cherry.....	253	343	416	535	630	Cheyenne.....	283	326	416	532	605
Clay.....	253	326	416	532	605	Colfax.....	276	339	416	532	605
Cuming.....	253	344	416	532	605	Custer.....	283	328	416	532	629
Dawes.....	271	326	416	536	633	Dawson.....	278	339	416	536	605
Deuel.....	253	326	416	532	605	Dixon.....	282	326	416	532	605
Dodge.....	253	326	429	565	605	Dundy.....	253	326	416	532	605
Fillmore.....	253	326	416	532	605	Franklin.....	253	326	416	537	605
Frontier.....	284	326	416	532	605	Furnas.....	253	326	416	532	630
Gage.....	253	327	424	539	605	Garden.....	253	339	416	535	633
Garfield.....	253	326	416	532	605	Gosper.....	253	326	416	532	612
Grant.....	253	326	416	532	605	Greeley.....	253	326	416	532	615
Hall.....	304	400	533	701	786	Hamilton.....	253	326	416	536	605
Harlan.....	253	326	416	533	605	Hayes.....	253	341	416	532	630
Hitchcock.....	253	326	416	532	605	Holt.....	253	326	416	532	605
Hooker.....	253	341	416	533	605	Howard.....	253	326	416	532	605
Jefferson.....	253	326	416	532	605	Johnson.....	253	330	416	532	605
Kearney.....	253	326	416	532	633	Keith.....	253	326	416	532	605
Keya Paha.....	253	326	416	532	605	Kimball.....	253	326	416	533	633
Knox.....	253	338	416	532	605	Lincoln.....	259	339	416	532	605
Logan.....	253	326	416	532	634	Loup.....	253	326	416	532	632
Mcpherson.....	253	326	416	533	605	Madison.....	259	341	451	584	712
Merrick.....	253	326	416	532	605	Morrill.....	253	328	416	532	630
Nance.....	253	326	416	532	605	Nemaha.....	253	326	416	532	605
Nuckolls.....	253	326	416	532	605	Otoe.....	253	326	416	532	634
Pawnee.....	253	326	416	536	605	Perkins.....	253	326	416	532	605
Phelps.....	283	326	416	533	633	Pierce.....	253	326	416	532	605
Platte.....	253	326	416	580	605	Polk.....	253	326	416	532	605
Red Willow.....	253	326	416	532	615	Richardson.....	253	326	416	532	605
Rock.....	253	333	416	532	605	Saline.....	253	340	416	532	605
Saunders.....	253	326	416	532	605	Scotts Bluff.....	257	338	429	532	630
Seward.....	314	326	425	532	605	Sheridan.....	253	326	416	532	606
Sherman.....	253	328	416	532	634	Sioux.....	253	326	416	532	633
Stanton.....	253	326	416	532	605	Thayer.....	253	343	416	532	605

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Thomas.....	253	326	416	532	605	Thurston.....	253	326	416	532	605
Valley.....	253	326	416	532	605	Wayne.....	289	326	416	532	630
Webster.....	253	326	416	532	605	Wheeler.....	253	326	416	533	605
York.....	253	326	421	532	605						

N E V A D A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Las Vegas, NV-AZ MSA.....	585	694	827	1150	1359	Clark, Nye
Reno, NV MSA.....	537	622	800	1114	1317	Washoe

NONMETROPOLITAN COUNTIES

0 BR 1 BR 2 BR 3 BR 4 BR NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Churchill.....	476	484	646	890	1057	Douglas.....	427	623	782	1086	1207
Elko.....	432	495	659	870	1083	Esmeralda.....	459	573	645	804	901
Eureka.....	351	573	645	803	898	Humboldt.....	516	542	653	857	915
Lander.....	355	549	645	806	1056	Lincoln.....	352	529	645	807	903
Lyon.....	419	502	645	897	1057	Mineral.....	357	487	648	850	1063
Pershing.....	488	495	659	824	943	Storey.....	495	501	659	917	1083
White Pine.....	352	485	645	870	914	Carson City.....	370	506	677	941	1110

N E W H A M P S H I R E

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Boston, MA-NH PMSA.....	953	1074	1343	1680	1972	Rockingham county towns of Seabrook town
Lawrence, MA-NH PMSA.....	579	700	881	1100	1353	South Hampton town
						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.....	588	759	917	1149	1285	Hillsborough county towns of Pelham town
Manchester, NH PMSA.....	473	675	842	1053	1180	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
Nashua, NH PMSA.....	557	777	963	1310	1558	Londonderry town
						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.....	573	686	882	1132	1388	Rockingham county towns of Brentwood town
						East Kingston town, Epping town, Exeter town
						Greenland town, Hampton town, Hampton Falls town

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR 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

0 BR 1 BR 2 BR 3 BR 4 BR Towns within non metropolitan counties

Belknap..... 467 540 710 960 1166
 Carroll..... 390 535 714 895 1115
 Cheshire..... 485 575 736 959 1136
 Coos..... 335 409 524 684 809
 Grafton..... 431 520 692 895 1130

Hillsborough..... 459 573 764 1010 1216

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..... 482 577 719 922 1028

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, Wilnot town
 Deerfield town, Northwood town, Nottingham town
 Middleton town, New Durham town, Strafford town

Rockingham..... 501 586 785 1089 1256
 Strafford..... 443 602 803 1006 1127
 Sullivan..... 466 473 615 808 862

NEW JERSEY

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Atlantic-Cape May, NJ PMSA..... 548 624 830 1039 1188 Atlantic, Cape May
 *Bergen-Passaic, NJ PMSA..... 763 930 1090 1452 1791 Bergen, Passaic
 Jersey City, NJ PMSA..... 742 876 1020 1297 1427 Hudson
 Middlesex-Somerset-Hunterdon, NJ PMSA..... 760 832 1038 1410 1629 Hunterdon, Middlesex, Somerset
 Monmouth-Ocean, NJ PMSA..... 642 769 976 1297 1521 Monmouth, Ocean

*Newark, NJ PMSA..... 616 788 949 1195 1509 Essex, Morris, Sussex, Union, Warren
 *Philadelphia, PA-NJ PMSA..... 573 704 871 1089 1366 Burlington, Camden, Gloucester, Salem
 Trenton, NJ PMSA..... 551 768 936 1268 1531 Mercer
 Vineland-Millville-Bridgeton, NJ PMSA..... 529 644 776 968 1089 Cumberland

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W M E X I C O

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Albuquerque, NM MSA..... 450 537 671 925 1092 Bernalillo, Sandoval, Valencia
 Las Cruces, NM MSA..... 314 395 469 643 758 Dona Ana
 Santa Fe, NM MSA..... 455 644 795 1068 1210 Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Catron..... 292 340 422 568 641 Chaves..... 292 331 436 601 641
 Cibola..... 303 331 422 568 641 Colfax..... 292 338 422 568 641
 Curry..... 292 338 422 568 641 Debaca..... 292 331 422 568 641
 Eddy..... 299 330 422 568 660 Grant..... 345 393 503 675 762
 Guadalupe..... 292 330 422 568 645 Harding..... 292 330 422 568 641
 Hidalgo..... 292 330 422 568 641 Lea..... 292 330 422 568 641
 Lincoln..... 330 338 446 587 735 Luna..... 320 352 451 605 683
 McKinley..... 292 365 465 579 650 Mora..... 292 330 422 568 641
 Otero..... 292 330 422 588 641 Quay..... 292 421 474 594 664
 Rio Arriba..... 340 348 428 568 641 Roosevelt..... 292 330 422 568 641
 San Juan..... 329 352 439 610 723 San Miguel..... 322 330 435 568 641
 Sierra..... 292 330 422 568 641 Socorro..... 292 330 422 568 658
 Taos..... 500 506 675 844 1111 Torrance..... 319 345 422 568 641
 Union..... 292 355 422 568 641

N E W Y O R K

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albany-Schenectady-Troy, NY MSA..... 418 515 633 794 887 Albany, Montgomery, Rensselaer, Saratoga, Schenectady
 Binghamton, NY MSA..... 375 421 526 667 749 Schoharie
 *Buffalo-Niagara Falls, NY PMSA..... 436 516 623 777 872 Erie, Niagara
 Dutchess County, NY PMSA..... 646 819 1014 1317 1539 Dutchess
 Elmira, NY MSA..... 375 421 517 655 780 Chemung
 Glens Falls, NY MSA..... 375 488 595 745 833 Warren, Washington
 Jamestown, NY MSA..... 375 421 507 655 749 Chautauqua
 Nassau-Suffolk, NY PMSA..... 868 1045 1275 1775 1902 Nassau, Suffolk
 New York, NY PMSA..... 815 907 1031 1289 1445 Bronx, Kings, New York, Putnam, Queens, Richmond
 Westchester County, NY..... 782 1020 1242 1613 1926 Westchester
 Newburgh, NY-PA PMSA..... 518 671 823 1043 1190 Orange
 Rochester, NY MSA..... 404 526 638 819 894 Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
 Syracuse, NY MSA..... 402 484 599 765 848 Cayuga, Madison, Onondaga, Oswego
 Utica-Rome, NY MSA..... 375 421 507 655 749 Herkimer, Oneida

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany.....	375	421	507	655	749	Cattaraugus.....	375	421	507	655	749
Chenango.....	400	421	507	655	749	Clinton.....	375	421	546	682	764
Columbia.....	469	493	633	828	886	Cortland.....	375	448	561	701	830
Delaware.....	375	421	507	655	805	Essex.....	375	427	536	671	749
Franklin.....	375	421	507	655	749	Fulton.....	375	421	507	655	749
Greene.....	375	487	584	753	919	Hamilton.....	375	451	519	655	749
Jefferson.....	404	476	560	701	786	Lewis.....	375	421	507	655	749
Otsego.....	375	444	511	659	838	St. Lawrence.....	375	421	507	655	749
Schuyler.....	406	433	514	715	843	Seneca.....	401	431	520	672	749
Steuben.....	389	442	507	662	749	Sullivan.....	487	546	665	919	932
Tompkins.....	490	527	677	946	1114	Ulster.....	460	641	770	1003	1262
Wyoming.....	375	421	507	655	749	Yates.....	375	421	507	655	749

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Asheville, NC MSA.....	368	445	580	756	816	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA.....	547	617	695	917	1097	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA.....	403	458	513	711	845	Cumberland
Greensboro, NC MSA.....	366	422	511	659	771	Wayne
Greensboro-Winston-Salem--High Point, NC MSA....	437	498	593	818	831	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph
Greenville, NC MSA.....	453	459	595	802	981	Stokes, Yadkin
Hickory-Morganton, NC MSA.....	417	454	527	665	787	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA.....	377	439	497	689	815	Onslow
*Norfolk-Virginia Beach-Newport News, VA-NC MSA.	558	628	743	1037	1218	Currituck
Raleigh-Durham-Chapel Hill, NC MSA.....	559	678	796	1069	1260	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA.....	352	381	462	613	676	Edgecombe, Nash
Wilmington, NC MSA.....	484	530	649	888	1060	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Allegheny.....	312	365	436	562	665	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashe.....	312	359	436	562	637	Anson.....	312	359	436	562	637
Beaufort.....	312	359	436	562	637	Avery.....	347	392	477	598	667
Bladen.....	312	359	436	562	637	Bertie.....	312	359	436	562	637
Carteret.....	352	387	471	655	729	Camden.....	312	398	531	663	744
Cherokee.....	312	359	436	562	637	Caswell.....	312	359	436	562	637
Clay.....	312	359	436	562	637	Chowan.....	312	359	436	562	637
Columbus.....	312	359	436	562	637	Cleveland.....	397	465	556	736	813
Dare.....	323	512	590	809	827	Craven.....	312	390	468	614	657
Gates.....	312	359	436	562	637	Duplin.....	312	359	436	562	637
						Graham.....	312	359	436	562	637

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Granville.....	329	359	436	577	Greene.....	312	359	436	562
Halifax.....	312	359	436	562	Harnett.....	351	406	493	637
Haywood.....	324	369	449	603	Henderson.....	403	415	513	682
Hertford.....	312	359	436	562	Hoke.....	312	359	436	562
Hyde.....	312	359	436	562	Iredell.....	421	431	568	711
Jackson.....	383	442	537	751	Jones.....	312	359	436	562
Lee.....	312	398	471	610	Lenoir.....	312	359	436	562
Mcdowell.....	312	380	455	622	Macon.....	312	372	436	562
Martin.....	312	359	436	562	Mitchell.....	312	407	467	638
Montgomery.....	312	359	436	562	Moore.....	358	432	516	706
Northampton.....	312	359	436	562	Pamlico.....	312	359	436	562
Pasquotank.....	359	385	479	665	Pender.....	376	455	525	678
Perquimans.....	312	359	436	562	Person.....	312	359	467	610
Polk.....	404	513	574	729	Richmond.....	312	359	436	562
Robeson.....	312	367	436	562	Rockingham.....	312	359	436	562
Rutherford.....	386	440	535	689	Sampson.....	312	359	436	562
Scotland.....	312	359	436	562	Stanly.....	312	359	443	598
Surry.....	312	359	436	562	Swain.....	312	359	436	562
Transylvania.....	360	386	488	647	Tyrrell.....	312	359	436	562
Vance.....	330	373	436	562	Warren.....	312	359	436	562
Washington.....	312	359	436	562	Watauga.....	406	488	617	839
Wilkes.....	353	399	449	621	Wilson.....	325	359	442	562
Yancey.....	312	366	436	562					

N O R T H D A K O T A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Bismarck, ND MSA.....	374	418	556	775	918	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA.....	366	504	609	846	905	Cass
Grand Forks, ND-MN MSA.....	379	451	594	819	914	Grand Forks

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adams.....	246	309	399	518	605	Barnes.....	246	311	412	539	605
Benson.....	280	309	399	518	605	Billings.....	267	309	399	518	605
Bottineau.....	246	309	399	518	605	Bowman.....	246	309	399	518	605
Burke.....	267	309	399	518	605	Cavalier.....	246	319	423	528	652
Dickey.....	267	309	399	518	605	Divide.....	246	309	399	518	605
Dunn.....	246	309	399	518	605	Eddy.....	246	309	399	518	605
Emmons.....	246	309	399	518	605	Foster.....	246	309	401	518	605
Golden Valley.....	246	318	421	527	605	Grant.....	246	309	399	518	605

* 50th percentile FMRs are indicated by an * before the MSA name.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4	
Griggs.....	246	309	399	518	605	Hettinger.....	246	309	399	518	605
Kidder.....	246	309	399	518	605	Lamoure.....	267	309	399	518	605
Logan.....	246	309	399	518	605	Mchenry.....	246	309	399	518	605
McIntosh.....	246	309	399	518	605	Mckenzie.....	246	309	399	518	605
McLean.....	261	309	399	518	605	Mercer.....	246	309	399	518	605
Mountrail.....	272	309	399	518	605	Nelson.....	246	309	399	518	605
Oliver.....	246	309	399	518	605	Pembina.....	246	309	399	526	625
Pierce.....	246	309	399	534	605	Ramsey.....	254	339	452	567	739
Ransom.....	252	309	399	518	605	Renville.....	285	309	399	521	617
Richland.....	259	309	407	518	605	Rolette.....	266	340	410	518	605
Sargent.....	246	309	399	518	605	Sheridan.....	246	309	399	518	605
Sioux.....	246	309	399	518	605	Slope.....	246	309	399	518	605
Stark.....	246	309	399	518	605	Steele.....	246	309	399	518	605
Stutsman.....	294	309	403	561	662	Towner.....	282	318	421	527	695
Traill.....	259	330	399	518	605	Walsh.....	329	350	435	545	610
Ward.....	246	339	452	611	728	Wells.....	262	309	399	518	605
Williams.....	246	309	399	518	605						
O H I O					Counties of FMR AREA within STATE						
METROPOLITAN FMR AREAS					0	BR 1	BR 2	BR 3	BR 4	BR	
Akron, OH PMSA.....	422	511	656	821	920	Portage, Summit					
Brown County, OH.....	322	379	472	612	675	Brown					
Canton-Massillon, OH MSA.....	307	399	509	637	716	Carroll, Stark					
Cincinnati, OH-KY-IN.....	386	495	662	887	958	Clermont, Hamilton, Warren					
*Cleveland-Lorain-Elyria, OH PMSA.....	481	603	748	951	1070	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina					
Columbus, OH MSA.....	419	496	636	808	929	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway					
Dayton-Springfield, OH MSA.....	410	459	585	755	848	Clark, Greene, Miami, Montgomery					
Hamilton-Middletown, OH PMSA.....	350	497	638	798	892	Butler					
Huntington-Ashland, WV-KY-OH MSA.....	325	381	469	598	659	Lawrence					
Lima, OH MSA.....	307	368	483	617	676	Allen, Auglaize					
Mansfield, OH MSA.....	307	368	468	584	654	Crawford, Richland					
Parkersburg-Marietta, WV-OH MSA.....	327	392	449	582	631	Washington					
Steubenville-Weirton, OH-WV MSA.....	307	361	454	578	645	Jefferson					
Toledo, OH MSA.....	384	467	570	734	797	Fulton, Lucas, Wood					
Wheeling, WV-OH MSA.....	335	367	454	578	645	Belmont					
Youngstown-Warren, OH MSA.....	359	424	531	667	759	Columbiana, Mahoning, Trumbull					

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Adams.....	297	353	439	559	627	Ashland.....	297	353	463	579	648
Athens.....	410	463	544	714	875	Champaign.....	297	362	470	587	658
Clinton.....	339	435	522	727	733	Coshocton.....	297	353	439	559	627
Darke.....	326	353	442	559	627	Defiance.....	353	401	529	666	739
Erie.....	297	396	494	666	808	Fayette.....	322	353	439	559	627
Gallia.....	297	353	439	559	627	Guernsey.....	297	353	439	559	627
Hancock.....	376	380	482	616	674	Hardin.....	297	353	439	559	627
Harrison.....	297	353	439	559	627	Henry.....	342	378	472	611	693
Highland.....	297	353	439	559	627	Hocking.....	297	353	439	559	627
Holmes.....	297	353	439	559	627	Huron.....	344	374	466	616	655
Jackson.....	297	353	439	559	627	Knox.....	350	385	493	637	704
Logan.....	349	354	456	614	639	Marion.....	297	353	439	559	627
Meigs.....	297	353	439	559	627	Mercer.....	297	353	439	559	645
Monroe.....	297	353	439	559	627	Morgan.....	297	358	439	559	627
Morrow.....	297	353	439	559	627	Muskingum.....	297	353	439	559	627
Noble.....	297	353	439	559	636	Ottawa.....	297	439	504	686	733
Paulding.....	297	353	439	559	627	Perry.....	297	353	439	559	627
Pike.....	312	371	461	590	659	Preble.....	304	361	449	576	643
Putnam.....	307	353	439	559	627	Ross.....	344	359	439	559	627
Sandusky.....	297	386	494	623	688	Scioto.....	297	353	439	559	627
Seneca.....	298	353	439	565	627	Shelby.....	297	362	483	603	676
Tuscarawas.....	297	353	460	576	645	Union.....	297	410	542	678	784
Van Wert.....	297	357	439	559	627	Vinton.....	297	353	439	559	627
Wayne.....	297	393	483	614	676	Williams.....	329	368	459	586	656
Wyandot.....	297	353	439	559	627						
O K L A H O M A											
METROPOLITAN FMR AREAS											
0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE											
Enid, OK MSA.....	318	323	428	595	681	Garfield					
Fort Smith, AR-OK MSA.....	358	362	477	637	669	Sequoyah					
Lawton, OK MSA.....	394	396	504	700	767	Comanche					
*Oklahoma City, OK MSA.....	412	448	581	807	903	Canadian, Cleveland, Logan, McClain, Oklahoma					
						Pottawatomie					
Tulsa, OK MSA.....	380	454	593	826	975	Creek, Osage, Rogers, Tulsa, Wagoner					

O K L A H O M A

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Enid, OK MSA.....	318	323	428	595	681	Garfield			
Fort Smith, AR-OK MSA.....	358	362	477	637	669	Sequoyah			
Lawton, OK MSA.....	394	396	504	700	767	Comanche			
*Oklahoma City, OK MSA.....	412	448	581	807	903	Canadian, Cleveland, Logan, McClain, Oklahoma			
						Pottawatomie			
*Tulsa, OK MSA.....	380	454	593	826	975	Creek, Osage, Rogers, Tulsa, Wagoner			

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4
Adair.....	266	305	381	506	580	Alfalfa.....	266	305	381	506
Atoka.....	266	305	381	506	580	Beaver.....	266	309	381	506
Beckham.....	270	305	381	506	580	Blaine.....	266	305	381	506
Bryan.....	266	305	381	506	580	Caddo.....	266	305	381	506
Carter.....	266	307	384	534	580	Cherokee.....	278	314	381	506
Choctaw.....	266	305	381	506	580	Cimarron.....	266	305	381	506
Coal.....	266	305	381	506	580	Cotton.....	266	305	381	506
Craig.....	266	305	381	519	614	Custer.....	266	305	390	543
Delaware.....	266	305	381	506	590	Dewey.....	266	305	381	506
Ellis.....	266	305	381	506	580	Garvin.....	266	305	381	506
Grady.....	292	305	394	536	648	Grant.....	266	305	381	506
Greer.....	266	305	381	506	580	Harmon.....	266	305	381	506
Harper.....	266	305	381	506	580	Haskell.....	266	305	381	506
Hughes.....	266	305	381	506	580	Jackson.....	266	345	420	552
Jefferson.....	266	305	381	506	580	Johnston.....	266	305	381	506
Kay.....	295	311	410	571	668	Kingfisher.....	266	313	389	510
Kiowa.....	266	305	381	506	580	Latimer.....	266	305	381	506
Le Flore.....	266	305	381	506	580	Lincoln.....	284	305	381	506
Love.....	266	305	385	506	580	McCurtain.....	266	305	381	506
Mcintosh.....	266	305	381	506	580	Major.....	266	319	381	528
Marshall.....	266	305	381	506	580	Mayes.....	266	309	412	519
Murray.....	266	305	381	506	580	Muskogee.....	287	323	381	526
Noble.....	266	305	381	506	580	Nowata.....	266	305	381	506
Okfuskee.....	266	305	381	506	580	Okmulgee.....	270	305	381	506
Ottawa.....	285	305	381	506	580	Pawnee.....	300	305	394	507
Payne.....	359	424	543	750	841	Pittsburg.....	266	305	381	506
Pontotoc.....	266	305	381	506	580	Pushmataha.....	266	305	381	506
Roger Mills.....	266	305	381	506	580	Seminole.....	266	305	381	506
Stephens.....	270	305	381	506	604	Texas.....	266	315	381	507
Tillman.....	266	305	381	506	580	Washington.....	266	364	443	588
Washita.....	266	305	381	506	580	Woods.....	266	305	381	506
Woodward.....	266	305	381	506	580					

O R E G O N

METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4

Corvallis, OR MSA.....	422	548	695	1045	1109	Benton
Eugene-Springfield, OR MSA.....	359	492	641	894	1033	Lane
Medford-Ashland, OR MSA.....	368	482	645	897	999	Jackson

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O R E G O N continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Portland-Vancouver, OR-WA PMSA..... 508 625 771 1073 1164 Clackamas, Columbia, Multnomah, Washington, Yamhill
 Salem, OR PMSA..... 431 508 650 895 938 Marion, Polk

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Baker..... 331 392 509 701 781
 Coos..... 331 404 537 748 781
 Curry..... 331 450 598 766 942
 Douglas..... 331 392 509 701 834
 Grant..... 331 392 509 701 781

Clatsop..... 382 452 593 809 909
 Crook..... 331 392 509 701 781
 Deschutes..... 409 471 629 877 1015
 Gilliam..... 331 418 509 701 781
 Harney..... 331 392 509 701 781

Hood River..... 389 438 595 774 916
 Josephine..... 331 402 517 701 817
 Lake..... 331 392 509 701 781
 Linn..... 398 473 612 843 940
 Morrow..... 331 392 509 701 781

Jefferson..... 331 392 509 701 781
 Klamath..... 331 392 509 701 829
 Lincoln..... 402 408 544 757 823
 Malheur..... 331 392 509 701 781
 Sherman..... 331 392 509 701 781

Tillamook..... 331 392 509 701 781
 Union..... 331 392 509 701 781
 Wasco..... 403 500 559 761 856

Umatilla..... 331 392 509 701 781
 Wallowa..... 331 392 509 701 781
 Wheeler..... 331 392 509 701 781

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Allentown-Bethlehem-Easton, PA MSA..... 398 541 643 838 940 Carbon, Lehigh, Northampton
 Altoona, PA MSA..... 304 387 463 604 676 Blair
 Erie, PA MSA..... 308 402 474 612 684 Erie
 Harrisburg-Lebanon-Carlisle, PA MSA..... 366 468 600 757 844 Cumberland, Dauphin, Lebanon, Perry
 Johnstown, PA MSA..... 308 392 471 612 684 Cambria, Somerset

Lancaster, PA MSA..... 406 497 620 809 870 Lancaster
 Newburgh, NY-PA PMSA..... 518 671 823 1043 1190 Pike
 *Philadelphia, PA-NJ PMSA..... 573 704 871 1089 1366 Bucks, Chester, Delaware, Montgomery, Philadelphia
 Pittsburgh, PA PMSA..... 413 505 608 762 851 Allegheny, Beaver, Butler, Fayette, Washington
 Westmoreland

Reading, PA MSA..... 321 474 585 730 823 Berks
 Scranton--Wilkes-Barre--Hazleton, PA MSA..... 326 456 546 681 823 Columbia, Lackawanna, Luzerne, Wyoming
 Sharon, PA MSA..... 338 392 471 612 684 Mercer
 State College, PA MSA..... 443 543 672 880 941 Centre
 Williamsport, PA MSA..... 308 394 474 612 684 Lycoming

York, PA MSA..... 344 471 585 729 816 York

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES				
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4
Adams.....	304	409	542	703	889	Armstrong.....	308	408	462
Bedford.....	304	387	462	604	674	Bradford.....	308	391	476
Cameron.....	304	387	462	604	674	Clarion.....	304	387	462
Clearfield.....	304	387	462	604	674	Clinton.....	304	387	462
Crawford.....	304	387	462	604	674	Elk.....	304	387	462
Forest.....	304	387	462	604	674	Franklin.....	304	387	469
Fulton.....	304	387	462	604	674	Greene.....	304	387	462
Huntingdon.....	304	387	462	604	674	Indiana.....	348	389	462
Jefferson.....	304	387	462	604	674	Juniata.....	304	387	462
Lawrence.....	304	387	462	604	674	Mc Kean.....	304	389	462
Mifflin.....	338	387	462	604	674	Monroe.....	486	580	716
Montour.....	359	387	486	674	797	Northumberland.....	320	406	496
Potter.....	304	387	462	604	674	Schuylkill.....	304	387	481
Snyder.....	365	387	463	604	674	Sullivan.....	304	387	462
Susquehanna.....	363	387	462	604	717	Tioga.....	304	387	462
Union.....	366	487	609	761	850	Venango.....	304	387	462
Warren.....	304	387	462	604	674	Wayne.....	305	471	555
R H O D E I S L A N D					Components of FMR AREA within STATE				
METROPOLITAN FMR AREAS					0	BR 1	BR 2	BR 3	BR 4
New London-Norwich, CT-RI MSA.....					532	643	784	980	1121
Providence-Fall River-Warwick, RI-MA MSA.....					407	555	667	837	1032
					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				

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES

	0 BR 1	BR 2	BR 3	BR 4	BR	Towns within non metropolitan counties
Newport.....	605	705	905	1133	1268	Middletown town, Newport city, Portsmouth town
Washington.....	715	805	904	1166	1284	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS

	0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA.....	410	491	578	785	928	Aiken, Edgefield
Charleston-North Charleston, SC MSA.....	432	502	576	765	892	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA.....	547	617	695	917	1097	York
Columbia, SC MSA.....	463	510	586	776	892	Lexington, Richland
Florence, SC MSA.....	351	390	507	633	710	Florence

Greenville-Spartanburg-Anderson, SC MSA.....	417	504	569	716	843	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA.....	455	462	592	741	829	Horry
Sumter, SC MSA.....	371	412	466	638	758	Sumter

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Abbeville.....	307	357	434	558	637	Allendale.....	307	357	434	558	637
Bamberg.....	307	357	434	558	637	Barnwell.....	322	357	436	558	637
Beaufort.....	437	537	618	771	864	Calhoun.....	307	357	434	558	637
Chester.....	307	357	434	558	637	Chesterfield.....	307	357	434	558	637
Clarendon.....	307	357	434	558	637	Colleton.....	307	357	434	558	637
Darlington.....	307	357	434	558	637	Dillon.....	307	357	434	558	637
Fairfield.....	307	410	467	582	654	Georgetown.....	307	390	437	558	664
Greenwood.....	308	357	434	558	637	Hampton.....	307	357	434	558	637
Jasper.....	307	357	434	558	637	Kershaw.....	307	357	434	558	637
Lancaster.....	321	358	434	558	637	Laurens.....	307	357	434	558	637
Lee.....	307	357	434	558	637	Mccormick.....	307	357	434	558	679
Marion.....	307	357	434	558	637	Marlboro.....	307	357	434	558	637
Newberry.....	307	357	434	558	637	Oconee.....	307	357	434	558	637
Orangeburg.....	307	357	434	558	637	Saluda.....	307	357	434	558	637
Union.....	307	357	434	558	637	Williamsburg.....	307	357	434	558	637

S O U T H D A K O T A

METROPOLITAN FMR AREAS

	0 BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Rapid City, SD MSA.....	386	460	612	832	1008	Pennington
Sioux Falls, SD MSA.....	374	516	655	828	952	Lincoln, Minnehaha

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES					
0	BR 1	BR 2	BR 3	BR 4	BR	0	BR 1	BR 2	BR 3	BR 4
Aurora.....	273	366	455	602	698	Beadle.....	273	363	455	602
Bennett.....	273	363	455	602	698	Bon Homme.....	303	363	455	602
Brookings.....	292	464	514	696	820	Brown.....	301	399	501	663
Brule.....	273	363	455	602	698	Buffalo.....	273	363	455	602
Butte.....	316	429	572	747	880	Campbell.....	273	363	455	602
Charles Mix.....	273	363	455	602	698	Clark.....	273	363	455	602
Clay.....	304	403	506	671	832	Codington.....	315	417	525	695
Corson.....	273	363	455	602	698	Custer.....	273	363	455	602
Davison.....	305	386	486	650	743	Day.....	305	363	455	602
Deuel.....	273	363	455	602	698	Dewey.....	273	363	455	602
Douglas.....	303	363	455	602	698	Edmunds.....	273	363	455	602
Fall River.....	311	363	455	602	698	Faulk.....	273	363	479	602
Grant.....	273	363	455	602	698	Gregory.....	275	363	455	602
Haakon.....	273	371	455	602	698	Hamlin.....	273	363	455	602
Hand.....	273	363	455	602	698	Hanson.....	278	380	505	635
Harding.....	273	371	455	602	698	Hughes.....	310	375	497	654
Hutchinson.....	273	363	455	602	698	Hyde.....	273	369	455	602
Jackson.....	273	368	455	602	698	Jerauld.....	273	366	455	602
Jones.....	273	363	455	602	698	Kingsbury.....	297	363	455	602
Lake.....	273	368	455	602	698	Lawrence.....	313	451	568	777
Lyman.....	273	363	455	602	698	Mccook.....	273	363	455	602
Mcperson.....	273	363	455	602	698	Marshall.....	323	363	455	602
Meade.....	384	433	578	756	892	Mellette.....	326	368	455	602
Miner.....	273	368	455	602	698	Moody.....	273	363	455	602
Perkins.....	273	363	455	602	698	Potter.....	273	363	455	602
Roberts.....	273	363	455	602	698	Sanborn.....	273	363	455	602
Shannon.....	273	368	455	602	698	Spink.....	296	363	463	602
Stanley.....	273	371	455	602	698	Sully.....	273	363	455	602
Todd.....	301	363	455	602	698	Tripp.....	273	363	455	602
Turner.....	273	363	455	602	698	Union.....	287	363	455	602
Walworth.....	273	371	455	602	698	Yankton.....	273	363	455	602
Ziebach.....	273	363	455	602	698					

T E N N E S S E E

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR					Counties of FMR AREA within STATE				
Chattanooga, TN-GA MSA.....	392	458	550	711	811	Hamilton, Marion			
Clarksville-Hopkinsville, TN-KY MSA.....	364	407	479	652	671	Montgomery			
Jackson, TN MSA.....	282	372	499	690	694	Madison, Chester			

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E N E S S E E continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Johnson City-Kingsport-Bristol, TN-VA MSA..... 327 390 484 627 743 Carter, Hawkins, Sullivan, Unicoi, Washington
 Knoxville, TN MSA..... 327 402 505 674 809 Anderson, Blount, Knox, Loudon, Sevier, Union
 Memphis, TN-AR-MS MSA..... 456 532 624 867 910 Fayette, Shelby, Tipton
 Nashville, TN MSA..... 458 548 676 921 1033 Cheatham, Davidson, Dickson, Robertson, Rutherford
 Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Bedford..... 254 326 399 503 559
 Bledsoe..... 254 297 375 494 553
 Campbell..... 256 297 375 494 553
 Carroll..... 254 309 375 494 553
 Clay..... 258 297 375 494 553
 Coffee..... 254 353 398 553 630
 Cumberland..... 267 297 390 543 553
 Dekalb..... 254 297 375 494 553
 Fentress..... 254 297 375 494 553
 Gibson..... 254 297 375 494 553
 Grainger..... 258 297 375 494 553
 Grundy..... 254 297 375 494 553
 Hancock..... 254 297 375 494 553
 Hardin..... 254 297 375 494 553
 Henderson..... 254 297 375 494 553
 Hickman..... 300 304 403 532 564
 Humphreys..... 254 310 375 494 553
 Jefferson..... 277 297 386 494 613
 Lake..... 254 297 375 494 553
 Lawrence..... 254 297 375 494 553
 Lincoln..... 254 297 380 494 553
 McNairy..... 254 297 375 494 553
 Marshall..... 298 325 424 536 596
 Meigs..... 254 297 375 494 553
 Moore..... 254 297 375 494 553
 Obion..... 294 298 382 506 553
 Perry..... 254 300 375 494 553
 Polk..... 254 297 375 494 553
 Rhea..... 254 317 375 500 553
 Scott..... 254 297 375 494 553
 Smith..... 254 297 375 494 553
 Trousdale..... 254 312 414 519 680
 Warren..... 282 297 385 494 553

Benton..... 274 312 375 494 553
 Bradley..... 254 320 427 577 703
 Cannon..... 254 297 375 494 553
 Claiborne..... 254 297 375 494 553
 Cocke..... 254 297 375 494 553
 Crockett..... 254 297 375 494 553
 Decatur..... 254 297 375 494 553
 Dyer..... 317 321 428 536 667
 Franklin..... 265 297 375 516 607
 Giles..... 254 323 400 501 560
 Greene..... 254 297 375 494 553
 Hamblen..... 254 298 392 520 553
 Hardeman..... 254 297 375 494 553
 Haywood..... 266 310 412 516 577
 Henry..... 254 297 375 494 553
 Houston..... 254 297 375 494 553
 Jackson..... 254 297 375 494 553
 Johnson..... 254 297 375 494 553
 Lauderdale..... 254 297 379 494 553
 Lewis..... 254 297 375 494 553
 McMinn..... 254 297 375 496 553
 Macon..... 254 297 375 494 553
 Maury..... 364 371 494 619 689
 Monroe..... 254 297 375 494 553
 Morgan..... 254 297 375 494 553
 Overton..... 254 297 375 494 553
 Pickett..... 254 297 375 494 553
 Putnam..... 309 312 400 550 592
 Roane..... 274 297 375 505 607
 Sequatchie..... 254 297 375 494 553
 Stewart..... 254 297 375 494 553
 Van Buren..... 254 297 375 494 553
 Wayne..... 254 297 375 494 553

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E N E S E E continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Weakley.....	275	297	375	494	553	White.....	258	297	375	494	553
T E X A S											
METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE						
Abilene, TX MSA.....	359	399	515	695	845	Taylor					
Amarillo, TX MSA.....	304	384	477	665	784	Potter, Randall					
*Austin-San Marcos, TX MSA.....	565	684	911	1265	1496	Bastrop, Caldwell, Hays, Travis, Williamson					
Beaumont-Port Arthur, TX MSA.....	346	419	510	675	714	Hardin, Jefferson, Orange					
Brazoria, TX PMSA.....	519	578	722	1006	1183	Brazoria					
Brownsville-Harlingen-San Benito, TX MSA.....	318	401	501	628	784	Cameron					
Bryan-College Station, TX MSA.....	404	470	594	829	978	Brazos					
Corpus Christi, TX MSA.....	379	465	593	808	955	Nueces, San Patricio					
*Dallas, TX.....	575	662	850	1176	1391	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall					
El Paso, TX MSA.....	427	479	567	785	931	El Paso					
*Fort Worth-Arlington, TX PMSA.....	525	572	741	1035	1219	Hood, Johnson, Parker, Tarrant					
Galveston-Texas City, TX PMSA.....	510	524	656	912	1077	Galveston					
Henderson County, TX.....	314	374	457	622	747	Henderson					
*Houston, TX PMSA.....	514	578	747	1042	1227	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller					
Killeen-Temple, TX MSA.....	426	444	561	781	858	Bell, Coryell					
Laredo, TX MSA.....	345	397	521	652	734	Webb					
Longview-Marshall, TX MSA.....	342	386	472	644	703	Gregg, Harrison, Upshur					
Lubbock, TX MSA.....	327	415	538	747	828	Lubbock					
Mc Allen-Edinburg-Mission, TX MSA.....	296	393	450	561	631	Hidalgo					
Odessa-Midland, TX MSA.....	327	378	504	701	813	Ector, Midland					
San Angelo, TX MSA.....	304	388	470	645	761	Tom Green					
*San Antonio, TX MSA.....	424	489	633	880	1041	Bexar, Comal, Guadalupe, Wilson					
Sherman-Denison, TX MSA.....	304	416	501	640	766	Grayson					
Texarkana, TX-Texarkana, AR MSA.....	330	403	493	650	690	Bowie					
Tyler, TX MSA.....	380	420	512	709	751	Smith					
Victoria, TX MSA.....	376	380	480	666	751	Victoria					
Waco, TX MSA.....	330	404	533	708	746	McLennan					
Wichita Falls, TX MSA.....	364	406	491	653	770	Archer, Wichita					

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR
Anderson.....	355	400	448	624	630		Andrews.....	296	341	412	552	630	
Angelina.....	322	375	421	584	689		Aransas.....	296	363	485	673	679	
Armstrong.....	296	341	446	559	630		Atascosa.....	296	341	412	552	630	
Austin.....	296	341	412	565	630		Bailey.....	296	341	412	552	630	
Bandera.....	316	341	412	559	630		Baylor.....	296	341	412	552	630	
Bee.....	296	341	412	552	630		Blanco.....	296	341	435	607	640	
Borden.....	296	341	412	552	630		Bosque.....	296	341	412	552	630	
Brewster.....	296	341	412	556	666		Briscoe.....	296	341	412	552	630	
Brooks.....	296	341	412	552	630		Brown.....	296	341	413	554	678	
Burleson.....	296	341	432	584	712		Burnet.....	376	434	534	742	868	
Calhoun.....	315	341	412	570	673		Callahan.....	296	341	412	552	630	
Camp.....	400	405	506	633	708		Carson.....	296	341	412	552	630	
Cass.....	296	341	412	552	630		Castro.....	298	341	412	552	630	
Cherokee.....	330	342	419	552	630		Childress.....	296	341	412	552	630	
Clay.....	296	348	412	552	643		Cochran.....	296	341	412	552	630	
Coke.....	296	341	412	552	630		Coleman.....	296	341	412	552	630	
Collingsworth.....	296	341	412	552	630		Colorado.....	296	341	412	552	630	
Comanche.....	296	341	412	552	630		Concho.....	296	341	412	552	630	
Cooke.....	320	341	433	588	654		Cottle.....	296	341	412	552	630	
Crane.....	296	341	412	552	630		Crockett.....	296	341	412	552	630	
Crosby.....	296	341	412	552	630		Culberson.....	296	341	412	552	630	
Dallam.....	296	341	412	552	630		Dawson.....	296	341	412	552	630	
Deaf Smith.....	296	341	412	552	641		Delta.....	296	354	412	552	630	
Dewitt.....	296	341	412	552	630		Dickens.....	296	341	412	552	630	
Dimmit.....	296	341	412	552	630		Donley.....	296	341	412	552	630	
Duval.....	296	341	412	552	630		Eastland.....	296	341	412	552	630	
Edwards.....	296	341	412	552	630		Erath.....	306	347	448	580	630	
Falls.....	296	341	412	552	630		Fannin.....	300	341	412	554	630	
Fayette.....	296	341	412	552	630		Fisher.....	296	341	412	552	630	
Floyd.....	296	341	412	552	630		Foard.....	296	341	412	552	630	
Franklin.....	296	341	412	570	630		Freestone.....	296	341	412	552	630	
Frio.....	296	341	412	552	630		Gaines.....	302	341	412	552	630	
Garza.....	296	341	412	552	630		Gillespie.....	296	373	481	663	676	
Glasscock.....	296	341	412	552	630		Goliad.....	296	341	412	552	630	
Gonzales.....	296	341	412	552	630		Gray.....	323	341	438	552	652	
Grimes.....	296	341	412	556	657		Hale.....	296	341	412	552	630	
Hall.....	296	341	412	552	630		Hamilton.....	296	341	412	552	630	
Hansford.....	296	341	412	552	648		Hardeman.....	296	341	412	552	630	
Hartley.....	296	341	412	552	630		Haskell.....	296	341	412	552	630	
Hemphill.....	296	381	425	594	630		Hill.....	296	341	412	552	630	

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR
Hockley.....	302	352	412	557	630	
Houston.....	296	341	412	552	630	
Hudspeth.....	356	402	448	563	739	
Irrion.....	296	341	412	552	630	
Jackson.....	296	342	412	552	630	
Jeff Davis.....	296	341	412	552	630	
Jim Wells.....	296	341	412	552	639	
Karnes.....	296	341	412	552	630	
Kenedy.....	296	341	412	552	630	
Kerr.....	296	383	477	665	785	
King.....	296	341	412	552	630	
Kleberg.....	359	373	453	633	745	
Lamar.....	296	366	431	603	712	
Lampasas.....	296	341	412	559	661	
Lavaca.....	296	341	412	552	630	
Leon.....	296	380	424	552	699	
Lipscomb.....	296	341	412	552	630	
Llano.....	296	381	506	634	832	
Lynn.....	296	341	412	552	630	
McMullen.....	296	341	412	552	630	
Marion.....	296	341	412	552	654	
Mason.....	296	341	412	552	630	
Maverick.....	296	341	412	552	630	
Menard.....	296	341	412	552	630	
Mills.....	296	341	412	552	630	
Montague.....	296	341	412	552	630	
Morris.....	296	341	412	552	630	
Nacogdoches.....	311	377	488	609	720	
Newton.....	296	341	412	552	630	
Ochiltree.....	296	341	412	552	630	
Palo Pinto.....	296	341	412	552	656	
Parmer.....	296	341	412	552	630	
Polk.....	330	360	419	565	685	
Rains.....	296	383	463	642	648	
Real.....	296	341	412	552	630	
Reeves.....	296	341	412	552	630	
Roberts.....	296	345	412	552	630	
Runnels.....	296	341	412	552	630	
Sabine.....	296	341	412	552	630	
San Jacinto.....	309	349	412	552	645	
NONMETROPOLITAN COUNTIES	0	BR 1	BR 2	BR 3	BR 4	BR
Hopkins.....	345	371	435	607	654	
Howard.....	314	341	412	556	630	
Hutchinson.....	296	341	425	594	701	
Jack.....	296	341	412	552	630	
Jasper.....	296	341	420	559	687	
Jim Hogg.....	296	341	412	552	630	
Jones.....	296	341	412	552	630	
Kendall.....	296	431	485	673	797	
Kent.....	296	341	412	552	630	
Kimble.....	296	341	448	562	630	
Kinney.....	296	341	412	552	630	
Knox.....	296	341	412	552	630	
Lamb.....	296	341	412	552	630	
La Salle.....	296	341	412	552	630	
Lee.....	335	377	422	589	662	
Limestone.....	296	341	412	552	630	
Live Oak.....	296	341	412	552	630	
Loving.....	296	341	412	552	630	
McCulloch.....	304	341	412	552	630	
Madison.....	296	351	412	552	650	
Martin.....	296	341	412	552	630	
Matagorda.....	341	374	463	642	648	
Medina.....	296	341	412	552	630	
Milam.....	296	341	412	552	630	
Mitchell.....	296	341	412	552	630	
Moore.....	296	347	412	552	641	
Motley.....	296	341	412	552	630	
Navarro.....	354	373	447	568	630	
Nolan.....	304	341	412	552	630	
Oldham.....	296	341	446	559	655	
Panola.....	296	348	412	552	630	
Pecos.....	296	341	412	556	657	
Presidio.....	296	341	412	552	630	
Reagan.....	377	383	508	639	835	
Red River.....	296	381	425	552	630	
Refugio.....	296	341	412	552	630	
Robertson.....	296	391	436	552	630	
Rusk.....	308	341	412	552	630	
San Augustine.....	296	341	412	552	630	
San Saba.....	296	341	412	552	630	

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Schleicher.....	296	341	412	552	630	Scurry.....	296	341	426	596	704
Shackelford.....	296	341	412	552	630	Shelby.....	296	341	412	552	630
Sherman.....	296	341	412	552	630	Somervell.....	338	381	425	584	630
Starr.....	296	341	412	552	630	Stephens.....	296	341	412	552	630
Sterling.....	296	341	412	552	630	Stonewall.....	296	341	412	552	630
Sutton.....	296	341	412	552	630	Swisher.....	296	341	412	552	630
Terrell.....	296	341	412	552	630	Terry.....	296	341	412	552	630
Throckmorton.....	296	341	412	552	630	Titus.....	313	390	441	610	630
Trinity.....	307	347	412	552	630	Tyler.....	296	341	439	552	724
Upton.....	296	341	412	552	630	Uvalde.....	296	341	412	552	630
Val Verde.....	296	392	462	576	680	Van Zandt.....	315	341	426	582	704
Walker.....	398	423	518	688	726	Ward.....	296	341	412	552	630
Washington.....	366	375	500	624	820	Wharton.....	296	341	412	552	630
Wheeler.....	296	341	412	552	630	Wilbarger.....	296	341	412	552	651
Willacy.....	296	341	412	552	630	Winkler.....	296	341	412	552	630
Wise.....	296	345	414	577	630	Wood.....	296	341	425	594	701
Yoakum.....	296	389	477	597	785	Young.....	296	341	412	552	639
Zapata.....	296	341	412	552	630	Zavala.....	296	341	412	552	630
U T A H											
METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE						
Kane County, UT.....					339	417	521	699	841	Kane	
Provo-Orem, UT MSA.....					469	495	612	849	1004	Utah	
*Salt Lake City-Ogden, UT MSA.....					506	586	744	1036	1213	Davis, Salt Lake, Weber	
NONMETROPOLITAN COUNTIES					NONMETROPOLITAN COUNTIES						
0	BR 1	BR 2	BR 3	BR 4	0	BR 1	BR 2	BR 3	BR 4		
Beaver.....	321	392	492	658	791	Box Elder.....	358	395	496	663	800
Cache.....	358	440	550	736	885	Carbon.....	344	392	492	658	791
Daggett.....	348	476	632	793	888	Duchesne.....	321	392	492	658	791
Emery.....	321	392	492	658	791	Garfield.....	321	392	492	658	791
Grand.....	321	392	492	658	791	Iron.....	328	446	554	695	816
Juab.....	321	392	492	658	791	Millard.....	321	392	492	658	791
Morgan.....	321	392	492	658	791	Piute.....	321	392	492	658	791
Rich.....	321	392	492	658	791	San Juan.....	321	392	492	658	791
Sanpete.....	321	392	492	658	791	Sevier.....	325	392	492	658	791
Summit.....	474	585	730	986	1199	Tooele.....	397	504	609	815	979
Uintah.....	321	392	492	658	791	Wasatch.....	321	408	492	658	791
Washington.....	394	487	645	863	1055	Wayne.....	321	392	492	658	791

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V E R M O N T

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Burlington, VT MSA.....	512	627	836	1140	1376		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

	0	BR 1	BR 2	BR 3	BR 4	BR	Towns within non metropolitan counties
Addison.....	457	551	641	894	1002		
Bennington.....	412	521	669	850	992		
Caledonia.....	398	475	580	730	838		
Chittenden.....	419	677	764	1062	1251		Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex.....	379	458	565	713	817		
Franklin.....	457	518	634	805	925		Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle.....	394	473	586	738	847		Alburt town, Isle La Motte town, North Hero town
Lamoille.....	365	506	604	828	948		
Orange.....	378	496	612	808	905		
Orleans.....	351	424	524	660	757		
Rutland.....	417	541	661	830	928		
Washington.....	393	487	657	821	922		
Windham.....	453	523	694	880	969		
Windsor.....	487	551	688	883	1047		

V I R G I N I A

METROPOLITAN FMR AREAS

	0	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA.....	459	543	693	922	1033		Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA.....	352	496	642	882	900		Clarke
Culpeper County, VA.....	411	598	695	920	1102		Culpeper
Danville, VA MSA.....	313	394	463	622	750		Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA.....	327	390	484	627	743		Scott, Washington, Bristol city
King George County, VA.....	426	567	636	884	891		King George
Lynchburg, VA MSA.....	372	411	473	622	750		Amherst, Bedford, Campbell, Bedford city, Lynchburg city
*Norfolk-Virginia Beach-Newport News, VA-NC MSA.....	558	628	743	1037	1218		Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

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Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

*Richmond-Petersburg, VA MSA.....	592	669	780	1084	1279	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA.....	315	394	512	656	817	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA.....	344	471	629	823	1028	Warren
*Washington, DC-MD-VA.....	748	851	999	1360	1642	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Accomack.....	365	395	461	613	738	Alleghany.....	320	389	456	613	738
Amelia.....	308	389	456	613	738	Appomattox.....	308	389	456	613	738
Augusta.....	308	399	485	639	776	Bath.....	308	389	456	613	738
Bland.....	308	389	456	613	738	Brunswick.....	308	389	456	613	738
Buchanan.....	308	389	456	613	738	Buckingham.....	308	389	456	613	738
Caroline.....	436	442	591	784	826	Carroll.....	308	389	456	613	738
Charlotte.....	308	389	456	613	738	Craig.....	308	389	456	613	738
Cumberland.....	308	423	490	613	738	Dickenson.....	308	389	456	613	738
Essex.....	308	433	511	712	841	Floyd.....	308	389	456	613	738
Franklin.....	308	389	456	613	738	Frederick.....	419	483	581	795	952
Giles.....	308	389	456	613	738	Grayson.....	308	389	456	613	738
Greensville.....	308	399	456	613	738	Halifax.....	308	389	456	613	738
Henry.....	308	389	456	613	738	Highland.....	308	389	456	613	738
King and Queen.....	308	442	498	622	738	King William.....	308	423	473	613	738
Lancaster.....	386	432	488	650	792	Lee.....	308	389	456	613	738
Louisa.....	308	401	495	687	738	Lunenburg.....	308	389	456	613	738
Madison.....	309	459	516	648	848	Mecklenburg.....	308	389	456	613	738
Middlesex.....	308	391	456	613	738	Montgomery.....	316	417	489	679	803
Nelson.....	308	389	456	613	738	Northampton.....	308	389	456	613	738
Northumberland.....	308	389	456	613	738	Nottoway.....	308	389	456	613	738
Orange.....	342	464	622	866	1016	Page.....	358	403	456	613	738
Patrick.....	308	389	456	613	738	Prince Edward.....	345	391	456	613	738
Pulaski.....	308	389	456	613	738	Rappahannock.....	312	506	570	790	932
Richmond.....	308	412	460	613	757	Rockbridge.....	308	389	456	613	738
Rockingham.....	308	427	540	740	868	Russell.....	308	389	456	613	738
Shenandoah.....	406	417	512	710	807	Smyth.....	308	389	456	613	738
Southampton.....	308	389	456	613	738	Surry.....	319	389	456	613	738
Sussex.....	308	389	456	613	738	Tazewell.....	308	389	456	613	738

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR
Westmoreland.....	308 417 553 696 900	Wise.....	308 389 456 613 738
Wythe.....	321 389 456 613 738		

W A S H I N G T O N

METROPOLITAN FMR AREAS	0 BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE

Bellingham, WA MSA.....	424 550 731 1011 1198	Whatcom
Bremerton, WA FMSA.....	509 587 761 1027 1249	Kitsap
Olympia, WA FMSA.....	523 643 802 1104 1302	Thurston
Portland-Vancouver, OR-WA FMSA.....	508 625 771 1073 1164	Clark
Richland-Kennewick-Pasco, WA MSA.....	529 605 724 1009 1183	Benton, Franklin
Seattle-Bellevue-Everett, WA FMSA.....	584 710 899 1249 1476	Island, King, Snohomish
Spokane, WA MSA.....	339 461 557 757 847	Spokane
Tacoma, WA FMSA.....	451 539 717 997 1127	Pierce
Yakima, WA MSA.....	382 470 583 781 815	Yakima

NONMETROPOLITAN COUNTIES	0 BR 1 BR 2 BR 3 BR 4 BR

Adams.....	336 402 524 691 766	Asotin.....	336 402 524 691 766
Chelan.....	336 402 524 691 766	Clallam.....	391 484 615 792 866
Columbia.....	336 402 524 691 766	Cowlitz.....	377 421 543 754 766
Douglas.....	392 415 524 691 766	Ferry.....	336 402 524 691 766
Garfield.....	336 402 524 691 766	Grant.....	361 402 524 691 766
Grays Harbor.....	343 402 529 712 822	Jefferson.....	336 434 534 723 766
Kittitas.....	336 402 524 691 766	Klickitat.....	336 402 524 691 766
Lewis.....	336 402 524 691 766	Lincoln.....	336 402 524 691 766
Mason.....	381 473 581 764 822	Okanogan.....	336 402 524 691 766
Pacific.....	336 402 524 691 766	Pend Oreille.....	336 402 524 691 919
San Juan.....	415 566 755 994 1184	Skagit.....	457 559 660 824 921
Skamania.....	336 402 524 691 766	Stevens.....	336 402 524 691 766
Wahkiakum.....	336 402 524 691 766	Walla Walla.....	336 402 524 700 827
Whitman.....	362 412 548 761 901		

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	0 BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE

Berkeley County, WV.....	462 494 581 726 816	Berkeley
Charleston, WV MSA.....	306 416 527 724 792	Kanawha, Putnam
Cumberland, MD-WV MSA.....	359 432 535 707 807	Mineral
Huntington-Ashland, WV-KY-OH MSA.....	325 381 469 598 659	Cabell, Wayne
Jefferson County, WV.....	467 518 641 834 945	Jefferson

* 50th percentile FMRs are indicated by an * before the MSA name.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Parkersburg-Marietta, WV-OH MSA..... 327 392 449 582 631 Wood
 Steubenville-Weirton, OH-WV MSA..... 307 361 454 578 645 Brooke, Hancock
 Wheeling, WV-OH MSA..... 335 367 454 578 645 Marshall, Ohio

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Barbour..... 274 347 389 500 582
 Braxton..... 274 334 389 500 582
 Clay..... 274 334 389 500 582
 Fayette..... 274 334 389 500 582
 Grant..... 274 334 389 500 582

Boone..... 274 334 389 500 582
 Calhoun..... 274 334 389 500 582
 Doddridge..... 283 334 389 500 582
 Gilmer..... 301 334 389 500 582
 Greenbrier..... 274 377 402 502 582

Hampshire..... 274 334 391 513 582
 Harrison..... 301 370 427 533 640
 Lewis..... 274 365 389 500 582
 Logan..... 280 334 389 503 595
 Marion..... 274 345 426 545 629

Hardy..... 274 334 389 500 582
 Jackson..... 274 342 389 532 582
 Lincoln..... 274 334 389 500 582
 McDowell..... 274 334 389 500 582
 Mason..... 274 334 389 500 597

Mercer..... 274 334 389 500 582
 Monongalia..... 344 382 463 640 756
 Morgan..... 372 420 470 590 657
 Pendleton..... 274 334 389 500 582
 Pocahontas..... 274 334 389 500 582

Mingo..... 274 334 389 500 589
 Monroe..... 274 334 389 500 582
 Nicholas..... 274 334 389 500 582
 Pleasants..... 282 334 389 500 596
 Preston..... 274 350 389 500 582

Raleigh..... 315 372 433 558 653
 Ritchie..... 274 334 389 500 582
 Summers..... 274 334 389 500 582
 Tucker..... 274 334 389 500 582
 Upshur..... 274 334 391 500 582

Randolph..... 274 334 389 500 582
 Roane..... 274 334 389 500 582
 Taylor..... 335 361 395 500 582
 Tyler..... 274 334 409 511 582
 Webster..... 274 334 389 500 582

Wetzel..... 309 334 420 524 660
 Wyoming..... 274 334 389 500 582

Wirt..... 274 334 389 500 582

W I S C O N S I N

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Appleton-Oshkosh-Neenah, WI MSA..... 342 421 536 674 778 Calumet, Outagamie, Winnebago
 Duluth-Superior, MN-WI MSA..... 300 386 496 662 771 Douglas
 Eau Claire, WI MSA..... 369 401 527 675 761 Chippewa, Eau Claire
 Green Bay, WI MSA..... 404 445 572 795 800 Brown
 Janesville-Beloit, WI MSA..... 377 475 588 736 825 Rock

Kenosha, WI PMSA..... 443 549 674 926 1043 Kenosha
 La Crosse, WI-MN MSA..... 304 391 498 666 807 La Crosse
 Madison, WI MSA..... 468 588 711 986 1164 Dane

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Milwaukee-Waukesha, WI PMSA..... 408 533 670 839 937 Milwaukee, Ozaukee, Washington, Waukesha
 *Minneapolis-St. Paul, MN-WI MSA..... 554 713 912 1233 1397 Pierce, St. Croix
 Racine, WI PMSA..... 363 450 594 766 838 Racine
 Sheboygan, WI MSA..... 326 420 512 640 795 Sheboygan
 Wausau, WI MSA..... 400 415 517 707 783 Marathon

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Adams..... 294 343 437 556 628 Ashland..... 320 356 437 556 628
 Barron..... 294 343 437 556 628 Bayfield..... 294 343 437 556 628
 Buffalo..... 294 343 437 556 628 Burnett..... 294 343 437 556 628
 Clark..... 294 343 437 556 628 Columbia..... 294 350 459 601 675
 Crawford..... 294 343 437 556 628 Dodge..... 372 377 496 622 693
 Door..... 294 364 451 581 705 Dunn..... 294 343 448 599 739
 Florence..... 294 343 437 556 628 Fond du Lac..... 341 462 547 745 767
 Forest..... 294 343 437 556 628 Grant..... 298 343 437 556 628
 Green..... 299 343 437 587 628 Green Lake..... 294 343 437 556 628
 Iowa..... 304 343 437 574 628 Iron..... 294 343 437 556 628
 Jackson..... 294 343 437 556 628 Jefferson..... 294 390 505 654 715
 Juneau..... 300 343 437 556 628 Kewaunee..... 294 343 437 556 628
 Lafayette..... 299 343 437 556 628 Langlade..... 294 343 437 556 628
 Lincoln..... 294 343 437 556 628 Manitowoc..... 297 343 437 556 628
 Marinette..... 294 343 437 556 628 Marquette..... 294 343 437 556 628
 Menominee..... 294 343 437 556 628 Monroe..... 294 343 437 582 628
 Oconto..... 294 343 437 556 628 Oneida..... 294 344 437 560 673
 Pepin..... 294 343 437 556 628 Polk..... 294 343 444 556 628
 Portage..... 358 377 489 612 756 Price..... 294 343 437 556 628
 Richland..... 294 343 437 556 628 Rusk..... 294 343 437 556 628
 Sauk..... 344 356 474 590 662 Sawyer..... 294 343 437 556 628
 Shawano..... 299 343 437 556 628 Taylor..... 294 343 437 556 628
 Trempealeau..... 294 343 437 556 628 Vernon..... 294 343 437 556 628
 Vilas..... 294 343 437 556 628 Walworth..... 306 432 559 729 820
 Washburn..... 294 343 437 556 628 Waupaca..... 294 343 437 556 660
 Waushara..... 294 343 437 556 628 Wood..... 318 365 452 568 638

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W Y O M I N G

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Casper, WY MSA..... 350 406 519 711 841 Natrona
 Cheyenne, WY MSA..... 395 496 662 847 1029 Laramie

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Albany..... 332 415 553 768 909
 Campbell..... 341 363 465 619 730
 Converse..... 316 363 465 617 709
 Fremont..... 316 363 465 617 709
 Hot Springs..... 316 363 465 617 709
 Lincoln..... 316 363 465 617 709
 Park..... 316 363 465 617 716
 Sheridan..... 316 363 465 617 716
 Sweetwater..... 329 363 465 619 730
 Uinta..... 331 363 465 618 747
 Weston..... 316 363 465 617 709

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Pacific Islands..... 739 888 1052 1319 1483

P U E R T O R I C O

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Aguadilla, PR MSA..... 226 276 328 407 459 Aguada Municipio, Aguadilla Municipio, Moca Municipio
 Arecibo, PR PMSA..... 245 297 349 438 493 Arecibo Municipio, Camuy Municipio, Hatillo Municipio
 Caguas, PR PMSA..... 287 344 406 511 569 Caguas Municipio, Cayey Municipio, Cidra Municipio
 Mayaguez, PR MSA..... 269 328 389 485 545 Gurabo Municipio, San Lorenzo Municipio
 Mayaguez, PR MSA..... 269 328 389 485 545 Anasco Municipio, Cabo Rojo Municipio
 Mayaguez, PR MSA..... 269 328 389 485 545 Hormigueros Municipio, Mayaguez Municipio
 Ponce, PR MSA..... 266 327 385 483 541 Sabana Grande Municipio, San German Municipio
 Ponce, PR MSA..... 266 327 385 483 541 Guayanilla Municipio, Juana Diaz Municipio
 Ponce, PR MSA..... 266 327 385 483 541 Penuelas Municipio, Ponce Municipio, Villalba Municipio
 Yauco Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Aguas Buenas Municipio, Barceloneta Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Bayamon Municipio, Canovanas Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Carolina Municipio, Catano Municipio, Ceiba Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Comerio Municipio, Corozal Municipio, Dorado Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Fajardo Municipio, Florida Municipio, Guaynabo Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Humacao Municipio, Juncos Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Las Piedras Municipio, Loiza Municipio
 San Juan-Bayamon, PR PMSA..... 360 439 517 648 728 Luquillo Municipio, Manati Municipio, Morovis Municipio

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

P U E R T O R I C O continued

METROPOLITAN FMR AREAS

0 BR 1 BR 2 BR 3 BR 4 BR 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 0 BR 1 BR 2 BR 3 BR 4 BR

Adjuntas Municipio..... 213 263 309 390 431
 Arroyo Municipio..... 213 263 309 390 431
 Ciales Municipio..... 213 263 309 390 431
 Culebra Municipio..... 213 263 309 390 431
 Guayama Municipio..... 213 263 309 390 431

Jayuya Municipio..... 213 263 309 390 431
 Lares Municipio..... 213 263 309 390 431
 Maricao Municipio..... 213 263 309 390 431
 Orocovis Municipio..... 213 263 309 390 431
 Quebradillas Municipio.. 213 263 309 390 431

Salinas Municipio..... 213 263 309 390 431
 Santa Isabel Municipio.. 213 263 309 390 431
 Vieques Municipio..... 213 263 309 390 431

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

St. Croix..... 509 618 729 909 1019

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

St. Johns/St. Thomas.... 654 792 934 1167 1307

* 50th percentile FMRs are indicated by an * before the MSA name.

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE D - FY 2003 FAIR MARKET RENTS FOR MANUFACTURED HOME
SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
CALIFORNIA	Los Angeles-Long Beach, CA PMSA	\$438
	Orange County, CA PMSA	\$532
	Riverside-San Bernardino, CA PMSA	\$349
	San Diego, CA MSA	\$539
	Vallejo-Fairfield-Napa, CA PMSA	\$468
COLORADO	Boulder-Longmont, CO PMSA	\$414
	Denver, CO PMSA	\$394
MARYLAND	Hagerstown, MD PMSA	\$245
	ST. MARYS	\$376
NEVADA	Reno, NV MSA	\$430
NEW YORK	Newburgh, NY-PA PMSA	\$381
	Rochester, NY MSA	\$258
	Utica-Rome, NY MSA	\$232
OREGON	Portland-Vancouver, OR-WA PMSA	\$314
	Salem, OR PMSA	\$388
	DESCHUTES	\$276
WASHINGTON	Olympia, WA PMSA	\$462

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Federal Register

**Thursday,
May 23, 2002**

Part III

Department of Energy

**Office of Energy Efficiency and
Renewable Energy**

10 CFR Part 430

**Energy Conservation Program for
Consumer Products; Central Air
Conditioners and Heat Pumps Energy
Conservation Standards; Final Rule,
Finding of No Significant Impact Energy
Conservation Program for Consumer
Products; Notice**

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Part 430****[Docket Number EE-RM-98-440]****RIN 1904-AA77****Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today amends the existing energy conservation standards for central air conditioners and heat pumps by raising the minimum energy efficiency levels by 20 percent for most central air conditioners and heat pumps, with somewhat lower levels for certain space-constrained products. DOE also today withdraws a final rule, published on January 22, 2001, that would have established even higher standards. DOE has determined that the standards in the January 22 final rule, which never became effective, are not economically justified under the Energy Policy and Conservation Act (EPCA). Finally, DOE adopts provisions that clarify the point in time at which DOE's discretion to amend standards becomes limited under EPCA.

DATES: The final rule amending 10 CFR part 430 published January 22, 2001 (66 FR 7170) is withdrawn as of May 23, 2002. The effective date of the amendments to the Code of Federal Regulations in this rule is August 6, 2002.

ADDRESSES: You may read copies of the public comments, the Technical Support Document for Energy Efficiency Standards for Consumer Products: Central Air Conditioners and Heat Pumps (TSD), the transcript of the public hearing, workshop transcripts in this proceeding, the petition for reconsideration submitted by the Air-Conditioning and Refrigeration Institute, and other post-promulgation submissions at the DOE Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202-586-3142), between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may obtain copies of the TSD and analysis spreadsheets from the

Office of Energy Efficiency and Renewable Energy's (EERE) Web site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/central_air_conditioner.html.

FOR FURTHER INFORMATION CONTACT:

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michael.raymond@ee.doe.gov, or Michael Bowers, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: mike.bowers@hq.doe.gov.

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I. Introduction

DOE today publishes three final rulemaking determinations with respect to amended central air conditioner and heat pump energy conservation standards under section 325 of the Energy Policy and Conservation Act (42 U.S.C. (U.S.C.) Section 6295). First, for reasons described in detail in Section IV of this Supplementary Information, DOE hereby withdraws the January 22, 2001 final rule that would have established 13 as the mandatory Seasonal Energy Efficiency Rating

(SEER)¹ for most central air conditioners and central air conditioning heat pumps (heat pumps). DOE withdraws the final rule because it: (1) Was promulgated without consulting with the Attorney General on potential anti-competitive effects, (2) contained a material defect in the statement of basis and purpose required by the Administrative Procedure Act (APA), (3) contained an effective date in conflict with the Congressional Review Act's lie-before-the-Congress requirement for major rules, and (4) was based on an assessment of benefits and burdens that resulted in an erroneous conclusion that a 13 SEER standard for both central air conditioners and central air conditioning heat pumps would be economically justified under title III, part B of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*). Second, DOE adopts regulatory provisions that implement section 325(o)(1) of EPCA, including definitions of the statutory terms "maximum allowable energy use" and "minimum required energy efficiency," and thereby pinpoints the point in time at which DOE's discretion to alter an amended standard becomes limited. The basis for this determination is discussed in Section III of this Supplementary Information. Third, DOE finalizes 12 SEER and 7.4 Heating System Performance Factor (HSPF)² as the amended energy conservation standard for most central air conditioners and central air conditioning heat pumps and adopts lower standards for certain space-constrained products. The basis for these determinations is discussed in Sections V through VII of this Supplementary Information.

II. Rulemaking History

The existing standards for residential central air conditioners and heat pumps were prescribed by the National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100-12) and have been in effect since 1992. The current central air conditioner and heat pump efficiency standards are as follows:

- Split system air conditioners and heat pumps—10 SEER/6.8 HSPF
- Single package air conditioners and heat pumps—9.7 SEER/6.6 HSPF

On September 8, 1993, DOE published an Advance Notice of

Proposed Rulemaking (ANOPR) announcing DOE's intention to revise the existing central air conditioner and heat pump efficiency standard pursuant to section 325(d) of EPCA, as amended by NAECA. 58 FR 47326. The fiscal year (FY) 1996 appropriations legislation for DOE imposed a moratorium on proposed and final energy conservation standards. Public Law 104-134. During the moratorium, DOE responded to congressional concern about how the appliance standards program was working by consulting with a broad spectrum of interested persons on possible improvements. As a result, on July 15, 1996, DOE published a new policy on how it would conduct appliance standards rulemaking (61 FR 36974). The new policy, "Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products," is commonly referred to as the Process Improvement Rule and is codified at 10 CFR part 430, subpart C, Appendix A. Under this new policy, DOE presented for comment an analytical framework for the central air conditioner and heat pump standards rulemaking during a workshop on June 30, 1998. The analytical framework described the different analyses that DOE would conduct, the methods for conducting them, the use of new spreadsheets, and the relationship of the various analyses. On November 24, 1999, DOE published a Supplemental ANOPR for central air conditioners and heat pumps and invited additional comment on issues raised following publication of the original ANOPR. 64 FR 66306.

DOE published a notice of proposed rulemaking on October 5, 2000 (October 5, 2000 NOPR). 65 FR 59590. The energy efficiency standards that DOE proposed for residential central air conditioners and heat pumps were as follows:

- Split-system and single-package air conditioners—12 SEER
- Split-system and single package heat pumps—13 SEER/7.7 HSPF
- Through-the-wall air conditioners and heat pumps—11 SEER/7.1 HSPF.

In addition to the increase proposed in SEER and HSPF, DOE requested comments on a proposal to adopt a standard for steady-state cooling efficiency, denominated EER (or Energy Efficiency Ratio). The proposal of an EER was designed to ensure more efficient operation at high outdoor temperatures, during periods when electricity use by air conditioners is at its peak. A public hearing was held in Washington, D.C. on November 16,

2000, to hear oral views, data and arguments on the proposed rule.

On January 22, 2001, at the close of the Clinton Administration, DOE published a final rule that would have required a SEER of 13 for all classes of central air conditioners, except for "niche" products which were omitted from the rule, and a corresponding HSPF of 7.7 for central air conditioning heat pumps (Final Rule, "Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pump Energy Conservation Standards," 61 FR 7170).

Pursuant to President Bush's Regulatory Review Plan,³ DOE conducted an internal review of the final, not-yet-effective rules issued under section 325 of EPCA that DOE published at the end of the Clinton Administration, including final rules concerning energy conservation standards for clothes washers, water heaters, and central air conditioners and central air conditioning heat pumps. Consistent with the EPCA criteria for determining whether a standard level is economically justified under section 325 (42 U.S.C. 6295(o)(2)(B)), DOE examined each of these three rules to determine, among other things, whether the rulemaking record was complete and whether the affirmative determination of economic justification was based on adequate findings with regard to the statutorily required considerations that make up the test of economic justification.

While DOE examined the three appliance energy conservation standards rulemakings under the President's Regulatory Review Plan, DOE received petitions for reconsideration for each final rule. In addition, DOE received notice that the Gas Appliance Manufacturers Association (with regard to the water heater rule) and the Air-Conditioning and Refrigeration Institute (ARI) and certain manufacturers (with regard to the central air conditioner rule) had filed petitions for review in the United States Court of Appeals for the Fourth Circuit.

Ultimately, DOE decided that neither the clothes washer rule nor the water heater rule warranted further rulemaking action and denied the related petitions for reconsideration. See 66 FR 19714 (April 17, 2001). With regard to central air conditioners and central air conditioning heat pumps, DOE concluded that ARI had raised

¹ The Seasonal Energy Efficiency Ratio or SEER is DOE's measure of energy efficiency for the seasonal cooling performance of central air conditioners and central air conditioning heat pumps.

² The Heating Seasonal Performance Factor is DOE's measure of energy efficiency for the seasonal heating performance of heat pumps.

³ This Plan was set forth in a memorandum from Assistant to the President and Chief of Staff Andrew H. Card, dated January 20, 2001, and published in the Federal Register on January 24, 2001 (66 FR 7702).

substantial questions as to the legal sufficiency of and basis for the January 22, 2001 final rule and that the interests of justice therefore dictated that DOE further postpone the rule's effective date in light of the pendency of ARI's petition for judicial review in the Fourth Circuit and its related petition for reconsideration. 66 FR 20191 (April 20, 2001). At that time DOE indicated that it would likely resolve these issues through supplemental rulemaking that would be forthcoming shortly.

On June 19, 2001, the State of New York, several other states, the Natural Resources Defense Council, Consumer Federation of America, and the Public Utility Law Project sued DOE in Federal court challenging its actions delaying the effective date of the January 22 final rule. The cases were consolidated, with the states of California, Connecticut, Vermont, Maine, New Jersey and Nevada joining the lawsuit (*State of New York et al. v. Abraham*, 01 Civ. 5499 (LTS) and 01 Civ. 5500(LTS)(SDNY);⁴ a petition for review was also filed with the Court of Appeals for the Second Circuit (Docket No. 01-4103).

On July 25, 2001, DOE granted ARI's petition and published a three part supplemental proposal with regard to energy conservation standards for central air conditioners and central air conditioning heat pumps. 66 FR 38822. First, DOE proposed regulatory provisions to clarify that section 325(o)(1), which qualifies DOE's rulemaking authority to prescribe amended energy conservation standards, applies as of an effective date for modifying the Code of Federal Regulations (CFR) set forth in the notice of final rulemaking and established consistent with the Congressional Review Act (5 U.S.C. 801-804). Second, in order to correct arguable legal errors and policy shortcomings, DOE proposed to withdraw the January 22 final rule. Third, based on a re-assessment of factual information and analyses already in the record, DOE proposed to determine that elevation of the currently enforceable central air conditioner and central air conditioning heat pump energy conservation standards by 20 percent is the maximum increase that is economically justified. For product classes other than through-the-wall products, DOE proposed a SEER of 12 with a corresponding HSPF of 7.4 which would apply to products manufactured in 2006. With respect to through-the-

wall product classes, DOE proposed somewhat lower standards. DOE conducted a public hearing in Washington, D.C. on October 2, 2001, to hear oral views, data and arguments on the proposed rule.

III. Authority of DOE To Reconsider and Withdraw the January 22, 2001 Final Rule and Adopt a 12 SEER Standard for Central Air Conditioners

The issue of DOE's authority to withdraw the January 22 final rule and propose a 12 SEER standard was first raised in ARI's March 23, 2001 petition for reconsideration (ARI, No. 138) and in a responding letter submitted to Secretary Abraham by various environmental organizations on April 6, 2001 (Alliance to Save Energy (ASE), *et al.*, ASE, No. 183). ARI contended that section 325(o)(1) of EPCA, which prohibits DOE from decreasing the maximum allowable energy use or minimum required energy efficiency of covered products, did not apply to reconsideration of the January 22 final rule because DOE had suspended the effective date of the rule (ARI, No. 138 at p. 3, n. 2). This provision has been referred to in the rulemaking as EPCA's "anti-backsliding provision." The environmental advocates took a contrary position, arguing that the anti-backsliding provision did apply and, thus, that DOE was precluded from reconsidering the rule and proposing a less stringent standard (ASE *et al.*, No. 183 at p. 5). In the April 20, 2001, notice postponing the effective date of the January 22 final rule, DOE stated its intention to issue a further notice of proposed rulemaking that would propose a 12 SEER/7.4 HSPF standard for central air conditioners and heat pumps, and stated that it would invite public comment on its explanation of the statutory authority to make such a proposal upon reconsideration of the January 22 final rule (66 FR 20101). Subsequently in the notice of supplemental proposed rulemaking published on July 25, 2001 (July 25 SNOPR), DOE included a detailed explanation of its interpretation of section 325(o)(1) of EPCA. We repeat much of the July 25 SNOPR explanation here as a preface to a discussion of public comments received on this issue. (Repeating DOE's analysis of section 325(o)(1) here also will assist readers who otherwise would have to look back at a copy of the July 25 SNOPR.)

A. DOE's Analysis of EPCA's Anti-Backsliding Provision

The starting point for the analysis of DOE's authority to reconsider the January 22 final rule and propose 12

SEER standards is the text of the statute. Section 325(o)(1) of EPCA provides as follows:

The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.

42 U.S.C. 6295(o)(1).

The critical term in section 325(o)(1), as it relates to the rulemaking on central air conditioners and heat pumps, is "minimum required energy efficiency." EPCA does not define this term. However, in context, it is clear that a SEER and an HSPF are benchmarks of "minimum required energy efficiency" for central air conditioners and heat pumps. See 42 U.S.C. 6295(d)(1) and (d)(2). The key question, however, is which SEER and HSPF represent the "minimum required energy efficiency" for central air conditioners and heat pumps that may not be decreased by an amended standard.

Had the new SEER and HSPF set out in the January 22, 2001, final rule been allowed to take effect, but (as the rule set forth) been made applicable only to appliances manufactured on or after January 23, 2006, we think this would be a close question. A reasonable argument could be made that the new SEER and HSPF became "required" immediately as to such appliances provided they were manufactured on or after January 23, 2006. A reasonable argument could also be made that the new SEER and HSPF would not be "required" until January 23, 2006, when appliances manufactured after that date would have had to comply with them. We address this question, and other considerations bearing on the answer to it, at greater length below.

In fact, however, the January 22, 2001 final rule expressly stated that the amendments it set out to existing standards in the Code of Federal Regulations would not take effect until 30 days after publication in the **Federal Register**. Well before that date arrived, on February 2, 2001, DOE postponed that effective date for an additional 60 days. Before that 60-day period had passed, on April 18, 2001, DOE further postponed the amendments' effective date pending the outcome of petitions by ARI for reconsideration and for judicial review.

As a result, the new SEER and HSPF, though set out in a final rule, never in any sense achieved the status of being the "required" "minimum energy efficiency" benchmarks. There has never been a single moment under any

⁴ On April 25, 2002, the district court dismissed the consolidated actions on the ground that the court lacked subject matter jurisdiction to consider the matters raised by the plaintiffs.

understanding of the word “required” at which any central air conditioner or heat pump, including one manufactured after January 23, 2006, could even arguably have been legally required to be manufactured in conformity with them. Hence, whatever might have been the case had the January 22 final rule been allowed to take effect, we do not see how the publication of a final rule that would have changed those standards, but was prevented by later agency action from doing so, could possibly establish “minimum required energy efficiency” benchmarks.

This interpretation of “minimum required energy efficiency” is reinforced by the rest of the sentence in section 325(o)(1) of which the phrase is a part. That sentence establishes a limitation on the “amended standards” the Secretary may prescribe. That wording strongly suggests that the “minimum required energy efficiency” levels below which the Secretary may not go are the ones established by *the standards being amended*. Because of the various actions postponing the effective date of the amendments to the standards it proposed, the January 22, 2001 rule never actually effectuated any amendment to the prior standards. Therefore, the standards that DOE proposed to amend are not the ones that would have been in place had the amendments set out in the January 22 rule actually been made. Rather, they are the standards prescribed by NAECA (SEER of 10.0 and HSPF of 6.8 for split systems manufactured after January 1, 1992, SEER of 9.7 and HSPF of 6.6 for single package systems manufactured after January 1, 1993), unamended until now by anything, including the never-made-effective amendments set out in the January 22, 2001 rule.

Notwithstanding public comments (discussed below), DOE continues to believe the foregoing analysis establishes that EPCA is unambiguous on the question of whether standards that are published in the **Federal Register**, but not yet effective, represent the “minimum required energy efficiency” benchmarks for central air conditioners and heat pumps for purposes of section 325(o)(1). We think it is clear from the statutory text that such standards do not represent the benchmarks for “minimum required energy efficiency.” We also believe that even if the statute were found to be ambiguous, for the reasons set out in the discussion that follows, that would not be the interpretation that we should select as a matter of policy.

If published but not yet effective standards are not the benchmarks for “minimum required energy efficiency”

in section 325(o)(1), the question remains whether DOE should construe the term “minimum required energy efficiency” to mean (A) energy efficiency standards that are not yet enforceable against the manufacturers, but that have been prescribed in a final rule amending prior standards, which amendments have been made to the CFR pursuant to an effective date that has passed; or (B) energy efficiency standards that are currently enforceable against the manufacturers if they manufacture and sell a non-compliant product.

DOE believes that alternative (A) is the preferable construction of the term, but only if the effective date selected for the final rule is consistent with other applicable laws and regulations and allows the Secretary an opportunity promptly to correct legal and policy errors that may have been contained in the final rule. If that precondition is satisfied, DOE believes alternative (A) will better advance the relevant statutory and policy considerations underlying section 325(o)(1): To promote greater energy efficiency while providing greater certainty to manufacturers who must plan and make the expenditures necessary to comply with an amended energy conservation standard—which is often a multi-year endeavor with substantial costs. We note that the relative certainty the interpretation set out in alternative (A) produces for manufacturers, which is a key comparative advantage of this interpretation over the competing one, is intimately tied to a proper effective date choice that facilitates prompt error correction, thereby potentially avoiding litigation that would seriously undermine the certainty sought to be achieved.

DOE believes that this resolution of the ambiguities in the statute is consistent with the statute’s text, structure, legislative history, and the fundamental policy choices it makes. We believe that on balance this approach better accomplishes the statute’s objectives than either adopting alternative (A) without the qualification set out above, thereby establishing a set of procedures that could have the effect of preventing the Secretary, within a short period after publication of a final rule that would modify such standards, from correcting defects in them that come to his attention; or adopting alternative (B), thereby reading the phrase “minimum required energy efficiency” to encompass only energy efficiency standards as of the date upon which manufacturers have to comply with those standards. Although at least the latter approach may well be a

permissible interpretation of section 325(o)(1), DOE believes that the view set out in our proposed rule is the better one.

The latter view—that a standard is only covered by section 325(o)(1) after manufacturers are required to comply with it—does at first blush appear to be the most natural reading of the phrase. This view, however, is in tension with the rest of the sentence, which, as explained above, suggests that the relevant point of comparison is the standard being amended, regardless of whether manufacturers actually have to comply with it. Moreover, if adopted, this view would allow the Secretary to change the energy efficiency standards right up to the minute before the compliance date. This seems to slight important reliance interests given significant weight in other respects by EPCA’s provisions on central air conditioner standards. For example, section 325(d) provides that with respect to central air conditioners, any amended standard contained in a final rule published on January 1, 1994, can apply only to products manufactured on or after January 1, 1999. It similarly provides that any amended standard contained in a final rule published between January 1, 1994, and January 1, 2001, can apply only to products manufactured on or after January 1, 2006. The purpose of these delays is plainly to give manufacturers a significant amount of time to develop and manufacture new products after a new standard is adopted but before it becomes enforceable. These delays also suggest that a change of standard on the eve of the manufacture of a product would be quite disruptive—which stands to reason given the lead-time necessary to be in a position to manufacture a compliant product. Thus, to allow a standard to be blocked at the last minute before the compliance deadline would potentially leave a rather large residual uncertainty difficult to reconcile with the central purpose of establishing a climate of regulatory stability served by these closely related portions of EPCA.

The legislative history of section 325(o)(1), although sparse, also suggests that this interpretation may not be the one best suited to accomplish the statute’s objectives. In discussing this provision in the House bill, the House report states:

DOE may not prescribe an amended standard that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. The purpose of this requirement is to prevent the Secretary from weakening any energy conservation standard

for a covered product, whether established in this Act or subsequently adopted. *This serves to maintain a climate of relative stability with respect to future planning by all interested parties* * * *

House Report No. 100-11 at p. 22 (emphasis added).

This language suggest that section 325(o)(1) was specifically expected, at least in the view of the House Committee, to act harmoniously with the other provisions of EPCA discussed above in facilitating regulatory certainty. The latter purpose is better accomplished by construing the provision to become applicable at a point well before the compliance date.

On the other hand, the reliance interests at stake also are not best served in the long run by taking the opposite course and adopting the view that section 325(o)(1) becomes applicable at the earliest possible moment. Let us imagine, for example, that DOE were routinely to make final rules containing standards potentially subject to section 325(o)(1) effective as soon as possible under the Administrative Procedure Act (APA). This would likely result in its making such rules effective 30 days after publication. DOE also could refuse to reconsider any aspect of such a rule relevant to the standard (unless it could complete its consideration and correct any errors within that 30-day time period), no matter how serious or legitimate a question might be raised, since to do so effectively, it would have to prevent the standard from going into effect.

This approach, however, would not be the best way for DOE to promote regulatory certainty either. It is common for agencies to entertain petitions for reconsideration at least for a short period after issuance of a final rule as well as to correct errors on their own motion during that time. Moreover, there is good reason why agencies follow this course, since otherwise such errors would have to await the completion of judicial review before they could be corrected, thereby creating substantial delay and uncertainty. Accordingly, this approach too, in addition to running counter to ordinary administrative practices that there is no reason to believe section 325(o)(1) was intended to abrogate, is not the best way to advance the regulatory stability sought by section 325(o)(1) and the other related EPCA provisions discussed above.

With respect to major rules, this approach also would create unnecessary conflict between section 325(o)(1) and the Congressional Review Act (CRA) (5 U.S.C. 801-804) enacted in 1996. Under

the CRA, before a final rule can become "effective," DOE must send a report to Congress (5 U.S.C. 801(a)(1)(A) and (B)). With respect to a "major rule" within the meaning of 5 U.S.C. 804(2), the CRA provides for the passing of a 60-calendar-day-lie-before-the-Congress period, after submission of the agency report, at the end of which a final rule could become effective in the absence of a Congressional resolution of disapproval (5 U.S.C. 801(a)(3)). CRA allows for an exception to the 60-day-lie-before requirement only if the President determines that a major rule should take effect before the end of that period because of an imminent health or safety threat or other emergency; because it is necessary to the enforcement of criminal laws or national security; or if it is issued pursuant to a statute implementing an international trade agreement (5 U.S.C. 801(c)).

In DOE's view, this last set of considerations also points the way to the answer to the question of at what time amendments to an energy-efficiency-setting-standard should best be viewed as having set "minimum required energy efficiency" benchmarks. For the reasons explained at the beginning of this section, that time must be after the final rulemaking the amendments to the standard is in effect. But, consistent with the objective of section 325(o)(1) and the other closely related EPCA provisions of promoting regulatory certainty, and to harmonize section 325(o)(1) with common administrative practice and the CRA, such final rules should ordinarily be made effective only after a reasonable hiatus after the date of publication has elapsed, allowing for prompt use of ordinary administrative error correction procedures and completion of congressional review under CRA. This is the earliest that manufacturer planning in reliance on a final major rule to amend appliance energy conservation standards can realistically be expected to begin. The certainty of the regulatory regime sought to be achieved therefore cannot occur until that time.

Accordingly, DOE believes it should construe section 325(o)(1) as applying to standards designed to set "minimum required energy efficiency" benchmarks at the point in time a final rule containing such a standard becomes effective. It also believes, however, that it should take care to select effective dates for final rules containing such standards that are consistent with the CRA and any other applicable law. This approach will best promote the regulatory certainty sought by section

325(o)(1) and its companion provisions and also comports well with the ordinary understanding of when a rule containing such standards has established "require[ments]."

DOE's decision to exercise its discretion to adopt this interpretation of section 325(o)(1) is not meant to intimate a view with respect to or suggest how anti-backsliding provisions in other statutes should be interpreted. Decisions of that type would of course turn on the specific language and policy of those provisions, just as today's decision did here.

Based on this consideration of the meaning of section 325(o)(1), DOE proposed to adopt a series of amendments to the EPCA rules intended to address these general issues. First, it proposed definitions of the terms "maximum allowable energy use" and "minimum required energy efficiency" as energy conservation standards established by a final rule that has become effective in the sense that it has modified the Code of Federal Regulations. It further proposed to include in its definition that to qualify, the final rule has to have made that modification on a date selected consistent with the CRA and other applicable law. Finally, in order to avoid confusion, it proposed a technical amendment adding a definition of the EPCA term "effective date," which EPCA, inconsistently with the Office of Federal Register guidance, treats as synonymous with "compliance date."

B. Discussion of Public Comments on the Anti-Backsliding Provision

DOE's analysis of section 325(o)(1) and related proposals were the subject of comment by the environmental advocates and by ARI. Their comments elaborated upon the basic positions each had taken in connection with ARI's petition for reconsideration. The environmental advocates prefaced their comments with the observation that ultimately the question whether the anti-backsliding provision prevents DOE from withdrawing the January 22 final rule and proposing a 12 SEER standard would likely be resolved in the Federal litigation previously mentioned (see "Rulemaking History.").

1. Environmental Advocates' Views

The environmental advocates, led by the Natural Resources Defense Council (NRDC) and several states, argue that EPCA's anti-backsliding provision applies upon publication of final standards in the **Federal Register**, and that DOE is powerless thereafter to entertain and grant a petition for reconsideration that requests lower

amended standards. (NRDC, No. 250; Attorneys General of New York and Massachusetts, No. 277; State of Vermont, No. 268; Attorney General of California, No. 249).

The NRDC commented that the APA contains no provision for “withdrawing” a final rule, and that if DOE wishes to change the rule, it may propose to “amend, revise or revoke” the rule consistent with the APA. NRDC also states there is no statutory or regulatory provision allowing interested persons to “petition for reconsideration” of a final rule. DOE does not believe these arguments have merit. DOE chose to use the word “withdraw” at the suggestion of staff in the Office of the Federal Register. “Withdraw” is the term that Office uses to describe the action of an agency in pulling back a rule document before it is officially filed and published in the **Federal Register**. (Document Drafting Handbook, Chapter 4, p. 4–2 (Oct. 1998)). The Office of the Federal Register decided that the word “withdraw” also is apt when an agency proposes to rescind a published final rule before it becomes effective, thus pulling it back before it modifies the Code of Federal Regulations. (Document Drafting Handbook, Chapter 2, p. 2–33 (Oct. 1998)). By proposing to withdraw the January 22 final rule and proposing a 12 SEER standard, DOE was proposing actions that, if adopted and implemented in a future final rule, would rescind or repeal the January 22 final rule. This course of action is entirely consistent with the APA. While an agency generally has inherent authority to reconsider its decisions, as the comments of ARI state (ARI, No. 259, at p. 6), the APA specifically gives interested persons the right to petition for rulemaking (5 U.S.C. 553(e)).

NRDC further believes DOE has misconstrued section 325(o)(1) by placing undue weight on the word “required” in the term “minimum required energy efficiency.” (Several state officials submitted comments similar in most respects to the NRDC views summarized here and in the discussion that follows.) NRDC faults DOE for ignoring the terms “maximum allowable energy use” and “maximum water use” in the same provision. All of these terms, NRDC argues, are simply measurements of energy conservation and do not refer in any way to compliance dates or requirements for manufacturers. NRDC, therefore, concludes that the word “require” is ambiguous and that one needs to look to the entire statutory scheme to determine when the anti-backsliding provision applies.

NRDC argues that the key word in section 325(o)(1) is “prescribe,” which it states occurs when a final rule is published in the **Federal Register**, and that it is the act of “prescribing” a final rule that triggers application of the anti-backsliding provision. NRDC finds supports for this interpretation of “prescribe” in section 325(p), which includes publication of a final rule as the last step in the procedure for prescribing a new or amended standard, and in the deadlines for various amendments of product standards that are determined by reference to the date of publication of the previous standard. NRDC also points to House Report language stating that section 325(o)(1) prevents DOE from weakening any energy conservation standard for a product “whether established in this Act or subsequently adopted,” and states that use of the word “adopted” confirms its view that the anti-backsliding provision applies when a rule is published in the **Federal Register**. Thus, under NRDC’s interpretation, once DOE published the January 22 final rule, it was powerless to reconsider it and propose a lower energy conservation standard.

DOE agrees that the term “minimum required energy efficiency” is not the only descriptor of energy or water efficiency used in section 325(o)(1), but it is the only descriptor that applies to standards for central air conditioners and heat pumps. That is why DOE’s analysis focuses on the word “required.” It is true that for other covered products, the applicable descriptor would be “maximum allowable energy use” or “maximum allowable water use.” For those products, the key word would be “allowable.” But for the same reasons why, as explained in DOE’s analysis above, the SEER and HSPF levels set out in the January 22 final rule never in any sense achieved the status of being the “required” “minimum energy efficiency” benchmarks, it is not much easier to see how a rule that never became effective could set “maximum allowable” amounts of water or energy use. At least until a new rule establishing maximum allowable energy or water use became effective, the “maximum allowable energy” or “maximum allowable water use” for a product subject to one of these standards would remain the preexisting standard. Accordingly, today’s rule contains definitions of “maximum allowable energy use” and “maximum allowable water use” that parallel the definition of “maximum required energy efficiency” that DOE adopts.

DOE also thinks NRDC’s view of the importance of the word “prescribe” in section 325(o)(1) is wrong. The word “prescribe” is nowhere defined in EPCA, but it does not necessarily mean “publication.” For example, section 325(p), concerning the procedure for prescribing any new or amended standard, provides that “[a] final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as practicable * * *” 42 U.S.C. 6295(p)(4). The use of the word “prescribe” in the same provision in which the word “publish” is used is a clear indication that Congress may have considered the two words to have different meanings. It is not necessary to resolve the question of the meaning to the word “prescribe” because it begs the critical question of what DOE may not prescribe under section 325(o)(1). With respect to central air conditioners and heat pumps, the what that DOE may not prescribe under section 325(o)(1) is any amended standard “which increases the * * * minimum required energy efficiency” of a central air conditioner or heat pump. We continue to believe that standards in a published rule that have never become effective are in no sense “required” energy efficiency levels, and therefore cannot be the baseline for determining whether the amended standards increase the minimum required energy efficiency.

Finally, DOE disagrees with NRDC’s conclusion that the structure and language of EPCA point to the date of publication of amended standards as the time at which section 325(o)(1) applies. More specifically, DOE does not think the statutory intervals for issuance of amended standards, which reference to the date the previous amendment is published, are relevant to the question of when the anti-backsliding provision applies. The fact that Congress required DOE to periodically review and publish amendments to standards does not seem to have any bearing on the question of what point in time standards are required for purposes of section 325(o)(1).

The Attorneys General of the States of New York and Massachusetts attacked the legality of DOE’s February 2, 2001, and April 20, 2001, notices delaying the effective date of the January 22 final rule (Attorneys General of New York and Massachusetts, No. 277). In their view, DOE lacked good cause for not proposing the delays for public comment. They dismiss DOE’s analysis of, and provisions for, implementing the anti-backsliding provision as a *post hoc* attempt to justify its allegedly illegal

delays of the January 22 final rule. Implicit in their comment is the view that the January 22 final rule actually became effective and, thus, became the required standards for purposes of section 325(o)(1). Based on this understanding of the anti-backsliding provision, the States of New York and Massachusetts consider DOE's action to withdraw the January 22 final rule and adopt 12 SEER standards to be a "rollback" of established standards.

As explained in the February 2, 2001, notice, DOE temporarily delayed the effective date of the January 22 final rule in conjunction with Executive branch wide direction from the Assistant to the President and Chief of Staff. DOE explained that seeking public comment would be impracticable and contrary to the public interest, and further that the imminence of the effective date in the rule constituted good cause for making the temporary delay effective upon publication. 66 FR 8745-46. The further postponement of the effective date on April 20, 2001, was based in part on several reasons why seeking public comment and delaying the effective date of the action were impracticable, unnecessary, and contrary to the public interest. 66 FR 20191. These reasons are not repeated in full here, but DOE explained why in light of ARI's petition for reconsideration and its lawsuit in the Court of Appeals for the Fourth Circuit, DOE concluded there was good cause for further delaying the January 22 final rule's effective date pending consideration of ARI's petition and judicial review. Thus, DOE thinks the short-term delays of the January 22 final rule's effective date to deal with substantial legal questions were lawful, and it rejects the characterization of DOE's proposals as a "rollback" of the energy conservation standards.

The Attorneys General of the States of New York and Massachusetts and the American Council for an Energy-Efficient Economy (ACEEE) argued that choosing an effective date for purposes of section 325(o)(1) other than the date of publication of amended standards would lead to delay and cause uncertainty with respect to when manufacturers must make investments needed to comply with amended standards. (Attorneys General of New York and Massachusetts, No. 277 at p. 9; ACEEE, No. 284 at p. 3). The Northeast Energy Efficiency Partnerships, Inc. (NEEP) argued DOE's proposed approach would give stakeholders another opportunity to try to influence decision makers and would "politicize" the standard setting process. (NEEP, No. 273 at p. 3). As explained above, DOE does not believe

section 325(o)(1) can be reasonably interpreted to apply upon the publication of final standards in the **Federal Register**. However, assuming DOE had the discretion to adopt such an interpretation, DOE would not choose the date of publication as the date for purposes of section 325(o)(1). As explained previously, a practice of routinely making published standards effective in the shortest time after publication (normally 30 days after publication under the APA) is not likely to provide greater certainty about the point in time when standards would take effect. If DOE were unable to respond to legitimate requests for reconsideration and correction of errors, then the only avenues available to aggrieved stakeholders would be lawsuits in Federal courts or efforts to obtain a legislative reversal under the CRA. This would not lead to expeditious correction of errors or resolution of issues and would not advance the goal of regulatory certainty. Such a practice also would create needless conflict with the CRA's 60-day lie-before-the-Congress provision for major rules.

2. ARI's Views

ARI agrees with DOE that the existing "minimum required energy efficiency" levels for central air conditioners and heat pumps, which DOE may not lower, are the standards established by NAECA, effective on January 1, 1992 (*i.e.*, 10 SEER/6.8 HSPF for split systems and 9.7 SEER/6.6 HSPF for single package systems). However, ARI believes the term "minimum required energy efficiency" should be understood to mean the existing efficiency standard as of the effective date under EPCA, *i.e.*, the date on which the standard is required to be complied with (ARI, No. 259 at p. 19). ARI believes its interpretation would avoid the risk of having the anti-backsliding provision apply unreasonably early, which could prevent DOE from taking appropriate administrative action to correct a promulgated standard or to respond to extraordinarily changed circumstances.

DOE acknowledged in its analysis of section 325(o)(1) that the view that a standard is only covered by the anti-backsliding provision after manufacturers are required to comply with it is an arguable one. This view, however, is in tension with the rest of the sentence, which suggests that the relevant point of comparison is the standard being amended, regardless of whether manufacturers actually have to comply with it. Moreover, by allowing the Secretary to change the energy efficiency standards at any point in time

before the compliance date, this view would slight important reliance interests that, as DOE explained in its analysis, are given significant weight by other provisions and the legislative history of EPCA. For these reasons, DOE continues to believe that section 325(o)(1) should be construed as applying to standards designed to set "minimum required energy efficiency" benchmarks at the point in time a final rule containing such a standard becomes effective for purposes of revising the Code of Federal Regulations, as long as the effective date that is selected is consistent with the CRA and any other applicable law. In today's rule, DOE adopts provisions that implement this approach.

ARI stated that if DOE adopted the approach it proposed in the July 25 SNOPR, then it would like the definitions of "minimum required energy efficiency" and "maximum allowable energy use" revised to ensure that DOE has sufficient time to complete any administrative action it takes in response to a petition for reconsideration. ARI recommended adding to each definition the words "or the date on which DOE completes action on any timely-initiated administrative reconsideration, whichever is later." (ARI, No. 259 at pp. 20-21). We think ARI's suggested language is a useful addition to the definitions. Therefore, we have revised the proposed definitions of "maximum allowable energy use" and "minimum required energy efficiency," to be added to section 430.2, accordingly. In addition, DOE adds a similar definition of "maximum allowable water use," which was inadvertently omitted in the July 25 SNOPR.

Under the provisions adopted in today's final rule, DOE will select a date for the "Effective Date" line of the notice of final rulemaking that in most instances will be 60 to 80 days after the date of publication. (DOE has chosen 75 days after the date of publication for the effective date of today's rule.) DOE would expect that any petition for reconsideration, to be considered timely, ordinarily would be submitted to DOE before the effective date specified in the notice of final rulemaking.

DOE did not receive any public comments on the proposed definition of the term "effective date" as used in EPCA and 10 CFR 430.32. This definition clarifies that for purposes of construing the term under EPCA (but not for purposes of determining the point at which amendments to a standard qualify for protection under section 325(o)(1)), the "effective date" is

the date on which an amended energy conservation standard becomes enforceable. DOE also did not receive comments on proposed section 430.34, which tracks the language of section 325(o)(1). Therefore, DOE today adopts these provisions without substantive change.

IV. Basis for DOE's Decision To Withdraw the January 22, 2001, Final Rule

In the July 25 SNOPR, DOE discussed possible legal errors in the promulgation of the January 22 final rule and economic issues that DOE believed had not been adequately considered in determining the energy efficiency levels that are the maximum technologically feasible and economically justified (66 FR 38827–29). On the basis of these possible legal and policy errors, DOE proposed to withdraw the January 22 final rule and proposed to adopt a 12 SEER standard for most central air conditioners and heat pumps, rather than the 13 SEER standard in the January 22 final rule (66 FR 38842). DOE today finally withdraws the January 22 final rule and amends the energy conservation standards for central air conditioners and heat pumps at the 12 SEER level except for two types of space-constrained products (through-the-wall products and small duct, high velocity systems) that are subject to lower standards. In taking this action, DOE corrects the legal and policy errors that were the basis for DOE's decision to withdraw the January 22 final rule.

A. Legal Issues

In the July 25 SNOPR, DOE acknowledged that to comply with section 325(o)(2)(B)(i) of EPCA, DOE arguably should have invited the Department of Justice to submit a supplemental statement of its views on the potential anti-competitive impact of a 13 SEER standard for both central air conditioners and heat pumps which was included in the January 22 final rule (66 FR 38827–28).

Section 325(o)(2)(B)(i) requires DOE to determine whether the benefits of a new or amended energy conservation standard exceed its burdens by considering “to the greatest extent practicable” seven factors, including: “(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard” (42 U.S.C. 6295(o)(2)(B)(i)). Section 325(o) also provides that:

For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of

competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the **Federal Register**.

42 U.S.C. 6295(o)(2)(B)(ii).

In context, it is clear that the term “the standard” in section 325(o)(2)(B)(i) refers to any new or amended energy conservation standard finally prescribed by DOE under section 325(o) of EPCA. Because the Department of Justice must transmit its determination to DOE within 60 days after the publication of a proposed rule, EPCA contemplates that the Department of Justice's determination on the anti-competitive effects of a proposed rule usually will enable DOE to fulfill its substantive obligation to consider the Department's expert opinion on the anti-competitive impact of a final standard. However, as the following discussion shows, this will not always be the case.

DOE submitted the October 5, 2000, NOPR to the Attorney General for review pursuant to the foregoing provisions. The NOPR described the range of potential trial standards considered by DOE, and proposed adoption of Trial Standard Level 3, *i.e.*, a minimum SEER of 12 for central air conditioner product classes and a SEER of 13, with a corresponding HSPF of 7.7, for central air conditioning heat pumps. The Department of Justice, consistent with its past practice, confined its response to the proposed standards, corresponding to Trial Standard Level 3.

The Department of Justice had several concerns about the proposed rule's potential impact on competition (*see* December 4, 2000, letter in the Appendix to this notice). First, the Department of Justice was concerned the proposed rule would have a disproportionate impact on small manufacturers. Second, it was concerned that the proposed standard for heat pumps, and in some instances the standard for air conditioners, would have an adverse impact on some manufacturers of equipment to be used to retrofit existing housing and used in manufactured housing. Third, it was concerned that the proposed 13 SEER for central air conditioning heat pumps could cause consumers to shift from heat pumps to other systems that include resistance heat systems, reducing the competition that presently exists between manufacturers of heat pumps and manufacturers of those other

heating systems. The Department of Justice urged DOE to take these concerns into account and consider “setting a lower SEER standard for heat pumps, such as the standard included in Trial Standard Level 2, and a lower SEER standard for air conditioners for retrofit markets where there are space constraints and for manufactured housing.” 66 FR 7200.

DOE published a final rule on January 22, 2001, that adopted standards that corresponded to Trial Standard Level 4 (the next higher level) and prescribed a minimum SEER of 13 for all the product classes, except for niche products, with a corresponding 7.7 HSPF. While the preamble to the final rule addressed the Department of Justice's specific concerns about the proposed 12 SEER standards for central air conditioners/13 SEER/7.7 HSPF standard for central air conditioning heat pump systems (66 FR 7192–93), DOE did not have the benefit of the Department of Justice's views on the potential anti-competitive impact of the final 13 SEER standards for both air conditioners and heat pumps. This is particularly of concern in light of information in the TSD indicating that standards at Trial Standard Level 4 (uniform 13 SEER standards) could cause several major manufacturers to consider selling their production assets rather than make the investment required to meet the new standard or face the loss of profits caused by the absence of premium products in the marketplace (*see* July 25 SNOPR at 38827). Therefore, DOE believes the Department of Justice's views on the potential of the standards in the January 22 final rule to accelerate consolidation in the industry should have been obtained.

As part of its review of the January 22 final rule pursuant to the President's Regulatory Review Plan, DOE on March 20, 2001, requested the views of the Department of Justice on the 13 standards for central air conditioners and heat pumps. The Department of Justice's letter responding to our request is published in the Appendix to this notice. While some commenters were critical of the substance of the Department of Justice's determinations about the anti-competitive impact of 13 SEER standards (*see* Section VI below), none of the comments disputed DOE's view that it should have obtained the Department of Justice's views on 13 SEER standards for both central air conditioners and heat pumps.

A second legal error that DOE considered in deciding to propose withdrawal of the January 22 final rule was the absence of any discussion of cumulative regulatory burden in the

statement of basis and purpose for the January 22 final rule. One aspect of the assessment of manufacturer burden required by EPCA (42 U.S.C. 6295(o)(2)(B)(i)(I)) is the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacture of a covered product. The preamble to the January 22 final rule contained an assertion that DOE considered cumulative burdens, but it did not discuss the magnitude of the burden or how DOE took it into account in evaluating manufacturer impact (see 66 FR 7174). In light of the evidence of cumulative regulatory burdens on manufacturers documented in the TSD, DOE thinks the mere assertion that DOE considered the cumulative burdens on manufacturers was not an adequate statement of basis and purpose for DOE's determination on manufacturer impact resulting from a 13 SEER standard. See July 25 SNOPR at 38828.

Finally, as explained in DOE's analysis of EPCA's anti-backsliding provision, the effective date included in the January 22 final rule (*i.e.*, the date 30 days after the date of publication of the notice) was in direct conflict with the CRA requirement that a major rule may not take effect until the later of the date occurring 60 days after the date Congress receives the agency's report under 5 U.S.C. 801 or the date the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3)(A)).

B. Policy Issues

DOE also based its decision to propose withdrawal of the January 22 final rule and to propose 12 SEER standards on its review of the analysis of benefits and burdens that underpinned the January 22 determination that 13 SEER is the maximum efficiency level that is technologically feasible and economically justified. As a result of its review of the January 22 rule, DOE tentatively concluded that a 13 SEER standard was not economically justified, and therefore DOE proposed to withdraw the January 22 final rule and proposed to adopt a 12 SEER standard (66 FR 38828–29).

As explained in the July 25 SNOPR (66 FR 38828) DOE believed that in issuing the January 22 final rule, the previous Administration had given inadequate consideration to the fraction of consumers, and especially low income consumers, who would incur significant increases in life-cycle cost as a result of the 13 SEER standard. DOE decided to propose a 12 SEER standard, instead of 13 SEER, because the analysis showed it would result in a lower

fraction of consumers who would incur significant life-cycle cost increases (25 percent and 34 percent of average and low income consumers, respectively, at 12 SEER versus 39 percent and 50 percent, respectively, at 13 SEER).

DOE also based its decision to propose the withdrawal of the January 22 final rule on its conclusion that DOE, in determining whether 13 SEER was economically justified, had not adequately assessed the potential regulatory burden and financial impacts on manufacturers of central air conditioners and heat pumps. See July 25 SNOPR at 38828–29. First, DOE concluded that the cumulative regulatory burden on manufacturers was not given sufficient weight in the determination of economic justification. As discussed previously, the statement of basis and purpose for the final rule did not explain how DOE considered the cumulative impact on manufacturers of the costs of complying with various new regulatory actions. DOE also concluded that inadequate consideration was given in the January 22 determination to the effect of 13 SEER standards on industry net cash flow and the maldistribution of regulatory burden on the two major types of manufacturers (66 FR 38829).

DOE's tentative conclusions in the July 25 SNOPR about the appropriate weight to give to the benefits and burdens of 13 SEER versus 12 SEER standards, and the resulting conclusion about which level is economically justified, were the subject of extensive public comment. These comments are discussed in Section VI of this Supplementary Information, and the analysis that supports DOE's determination that 12 SEER is the maximum efficiency level that is technologically feasible and economically justified is set forth in Section VII.

V. Amended Energy Conservation Standards

A. Overview

The amended standards in today's rule take into account a decade of technological advancements and will save consumers and the nation money, significant amounts of energy, and have substantial environmental and economic benefits. When they go into effect, the amended standards will raise the energy efficiency standards to 12 SEER for new central air conditioners and to 12 SEER/7.4 HSPF for new central air conditioning heat pumps. The standards will apply to products manufactured for sale in the United States, as of January 23, 2006. The

standard for split-system air conditioners, the most common type of residential air conditioning equipment, represents a 20 percent improvement in energy efficiency. For split-system heat pumps, the new standard represents a 20 percent improvement in cooling efficiency and a 9 percent improvement in heating efficiency. The standard will increase the cooling efficiency of single-package air conditioners and single-package heat pumps by 24 percent and the heating efficiency of single-package heat pumps by 12 percent. DOE has determined that the new standards are the highest efficiency levels that are technologically feasible and economically justified as required by law.

DOE adopts somewhat lower amended standards for through-the-wall central air conditioner and heat pump products to ensure that more efficient versions remain available for this application. DOE establishes 10.9 SEER and 7.1 HSPF as the standard for through-the-wall split systems, and 10.6 SEER and 7.0 HSPF for through-the-wall single package systems.

Finally, DOE creates a new class for small duct, high velocity central air conditioners and heat pumps. These products are designed for retrofit applications and have special requirements that make it unlikely they can meet the efficiency standards that DOE today establishes for conventional equipment. As discussed in Section VI, DOE received public comments that supported creation of a separate class for these products. While DOE includes a definition of "small duct, high velocity system" in the final rule and creates a separate class for them, DOE retains the NAECA prescribed standard levels for small duct, high velocity products in today's final rule because DOE has not yet conducted the analysis required to determine whether higher levels are technologically feasible and economically justified. DOE in the near future intends to begin a rulemaking to determine if a higher standard is warranted.

Several aspects of today's standards warrant highlighting, as follows.

1. Central Air Conditioner and Heat Pump Features

The efficiency levels in today's final rule can be met by central air conditioner and heat pump designs that are already available in the market. DOE fully expects variations of these models to exist under the new standards, offering all the features and utility that are found in currently available products.

2. Consumer Benefits

Table 1 summarizes the "characteristics" of today's typical

central air conditioners and heat pumps. Table 2 presents the implications for the

average consumer of the standards becoming effective in 2006.

TABLE 1.—CHARACTERISTICS OF TODAY'S TYPICAL CENTRAL AIR CONDITIONERS AND HEAT PUMPS ¹

	Split system air conditioner	Split system heat pump	Single package air conditioner	Single package heat pump
Average Installed Price	\$2,236	\$3,668	\$2,607	\$3,599
Annual Utility Bill ²	189	453	189	453
Life Expectancy	18.4 years	18.4 years	18.4 years	18.4 years
Energy Consumption per year	2,305 kWh	6,549 kWh	2,305 kWh	6,549 kWh

¹ "Typical" equipment have cooling and heating efficiencies of 10 SEER and 6.8 HSPF, respectively.

² Utility bill pertains to the energy cost of operating the air conditioner or heat pump.

TABLE 2.—IMPLICATIONS OF NEW STANDARDS FOR THE AVERAGE CONSUMER

	Split system air conditioner	Split system heat pump	Single package air conditioner	Single package heat pump
Year Standard Comes into Effect	2006	2006	2006	2006
New Average Installed Price	\$2,449	\$3,812	\$2,765	\$3,748
Estimated Price Increase	213	144	158	149
Annual Utility Bill Savings	31	50	31	50
Average Net Saving over Equipment Life	113	365	163	421
Energy Savings per Year	384 kWh	768 kWh	384 kWh	768 kWh

The most typical air conditioner (*i.e.*, split system air conditioner which comprises approximately 65 percent of today's central air conditioning and heat pump market) has an installed price of \$2,236 and an annual utility costs of \$189. In order to meet the 2006 standard, DOE estimates that the installed price of a typical air conditioner would be \$2,449, an increase of \$213.⁵ This price increase would be offset by an annual energy savings of about \$31 on the utility bills. The most typical heat pump (*i.e.*, split system heat pump) currently has an installed price of \$3,668 and annual utility costs of \$453. In order to meet the 2006 standard, DOE estimates that the installed price of a typical heat pump would be \$3,812, an increase of \$144.⁶ This price increase would be offset by an annual energy savings of about \$50 on the utility bills.

DOE recognizes that most consumers pay energy prices that are higher or lower than the "typical" consumer and operate their equipment more or less often. Consequently, DOE has investigated the effects of the different energy prices across the nation and different air-conditioning usage patterns. DOE estimates that 75 percent of all consumers purchasing a new typical air conditioner would either

save money or would be negligibly impacted as a result of the 2006 standard.⁷ In the case of a new typical heat pump, all consumers either would save money or be negligibly impacted.⁸

DOE also investigated how these standards might affect low income consumers. On average, DOE estimates that it is likely that low income air conditioner and heat pump consumers would also save money over the life of the equipment as a result of the standard.

3. National Benefits

The standards in today's rule will provide benefits to the nation. DOE estimates the standards will save approximately 3 quads of energy over 25 years (2006 through 2030). This is equivalent to all the energy consumed by nearly 17 million American households in a single year. In 2020, the standards will avoid the construction of three 400 megawatt coal-fired plants and nineteen 400 megawatt gas-fired plants. These energy savings would result in cumulative greenhouse gas emission reductions of approximately 24 million metric tons (Mt) of carbon, or an amount equal to that produced by approximately 2 million cars every year. Additionally, air pollution would be

reduced by the elimination of approximately 80 thousand metric tons (kt) of nitrous oxides (NO_x) from 2006 through 2020. In total, DOE estimates this standard will have a net benefit to the nation's consumers of \$2 billion over the period 2006 through 2030.⁹

B. Statutory Framework

Part B of Title III of EPCA provides for the Energy Conservation Program for Consumer Products other than Automobiles (42 U.S.C. 6291 *et seq.*). The consumer products subject to this program include central air conditioners and heat pumps. Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards.

As previously stated, NAECA prescribed initial Federal energy conservation standards for central air conditioners and heat pumps (42 U.S.C. 6295(d)). NAECA further specified that DOE is to review and publish amended standards by January 1, 1994 (42 U.S.C. 6295(d)(3)(A)). Under EPCA, any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a

⁵ Based on estimates supplied by the industry trade association, the Air-Conditioning and Refrigeration Institute (ARI), the installed price is estimated to be \$2,510, an increase of \$274.

⁶ Based on estimates supplied by ARI, the installed price is estimated to be \$3,933, an increase of \$265.

⁷ Based on estimates supplied by ARI, 61 percent of all consumers purchasing a new typical air conditioner will either save money or will be negligibly impacted as a result of the 2006 standard.

⁸ Based on estimates supplied by ARI, 97 percent of all consumers purchasing a new typical heat pump will either save money or will be negligibly impacted as a result of the 2006 standard.

⁹ Net benefit assumes NAECA efficiency scenario. Net benefit would be \$3 billion for Roll-up efficiency scenario.

proposed standard (42 U.S.C. 6295(o)(2)(B)(i)). That section further provides that, after reviewing the comments, DOE must determine whether the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(i) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(ii) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(iii) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(iv) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(v) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(vi) The need for national energy conservation; and

(vii) Other factors the Secretary considers relevant.

In addition, section 325(o)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that “the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.” (42 U.S.C. 6295(o)(2)(B)(iii)). The rebuttable presumption test is an alternative path to establishing economic justification.

C. Methodology Used in DOE Analyses

For this final rule, the methodologies used to evaluate the seven factors described above are unchanged from those used in the analyses that DOE relied on for the October 5 proposed rule and the January 22 final rule. DOE’s methodology is discussed in the October 5, 2000 NOPR (65 FR 59594–97) and the January 22 final rule (66 FR 7173–74). Additionally, the TSD that accompanies this rulemaking provides a detailed description of every aspect of the various analytical methodologies used.

D. General Discussion of DOE’s Consideration of Statutory Criteria

1. Technological Feasibility

Pursuant to section 325(p)(2) of EPCA, and as discussed in the October 5, 2000

NOPR (65 FR 59593, 59612) and January 22 final rule (66 FR 7172), DOE determined that 18 SEER is the maximum technologically feasible level (Max Tech Level) for cooling efficiency for all product classes and capacities covered by this rulemaking. The Max Tech Level for heating efficiency is 9.4 HSPF, which is the highest HSPF rating currently available in residential heat pumps. DOE’s determinations of technological feasibility for central air conditioners and heat pumps have not been disputed in the written and oral comments of interested persons in the rulemaking.

2. Economic Justification Factors

DOE has considered the seven statutory factors for determining whether a conservation standard is economically justified. This section briefly summarizes DOE’s consideration of these factors. More detailed consideration of these factors is provided in the discussion of comments in Section VI and the discussion of analytical results in Section VII of this Supplementary Information.

a. Economic Impact on Manufacturers and Consumers

The record for this rulemaking contains several discussions of the economic impact on manufacturers and consumers. See 66 FR 7174–78, 7185–7191, and 66 FR 38828–29, 38834–35. In the July 25 SNOPR, DOE identified deficiencies in the assessment of manufacturer and consumer impacts that was the basis for adoption of the January 22 final rule. Later sections of this Supplementary Information address the public comments received and DOE’s conclusions on these subjects.

b. Life-Cycle Costs and Rebuttable Presumption

DOE considered life-cycle costs, as discussed in the January 22 final rule. 66 FR 7173, 7175, 7187–90. DOE calculated the installed price and operation and maintenance costs for a range of consumers around the nation to estimate the range in life-cycle cost benefits that consumers would expect to receive due to new standards. DOE has made no change in its assumptions and analysis of life-cycle costs in making the determinations in today’s notice of final rulemaking.

Section 325(o)(2)(B)(iii) of EPCA provides that if, according to the applicable test procedure, the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then DOE is to presume that such standard is

economically justified. This presumption of economic justification can be rebutted upon a proper showing.

Using the reverse engineering manufacturing costs, the standards DOE adopts today for split heat pumps and packaged heat pumps can be shown to have satisfied the rebuttable presumption requirements in section 325(o)(2)(B)(iii).¹⁰ Therefore, DOE presumes that the standards adopted for split system and single package heat pumps are economically justified. The analysis, however, shows that split system air conditioners and single package air conditioners do not meet the standard for use of the rebuttable presumption of economic justification. Therefore, DOE does not presume them to be economically justified. If the rebuttable presumption does not apply, DOE must perform additional analysis to determine economic justification. As discussed in Section VII, DOE has performed an analysis for all classes of central air conditioner and heat pump products that shows the standards in today’s rule are indeed economically justified.

c. Energy Savings

EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. DOE forecasted energy savings through the use of a national energy savings (NES) spreadsheet, as discussed in the October 5, 2000 NOPR (65 FR 59590, 59593). DOE relies on the same spreadsheets and assumptions for its estimate of the NES that would result from implementation of today’s standards.

As discussed in the October 5, 2000 NOPR, section 325(o)(3)(B) of EPCA prohibits DOE from adopting a standard for a product if that standard would not result in “significant” energy savings. The energy savings for the standard levels DOE is adopting today are non-trivial—indeed they are substantial—and therefore we consider them “significant” within the meaning of

¹⁰ To avoid confusion, DOE points out that the statute requires DOE to use “the applicable test procedure” to calculate the payback periods for purposes of the rebuttable presumption. As explained in the October 5, 2000 NOPR (65 FR 59596), the annual cooling and heating energy consumption calculations based on DOE’s test procedure are significantly greater than the weighted-average values from DOE’s life-cycle cost analyses based on the 1997 Residential Energy Consumption Survey, used in other DOE analyses. For this reason, the payback periods presented in Section VII of this portion of the preamble, entitled “Analytical Results and Conclusions,” are significantly longer than those calculated to determine whether the rebuttable presumption applies to these products.

section 325 of the Act as construed by the court in *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).

d. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products, DOE has attempted to eliminate any degradation of utility or performance in the products covered by today's rule. Attributes that affect utility include the product's ability to cool and dehumidify. In some applications, noise levels may also be an aspect of utility. Product size or configuration can also be considered utility if a change in size would cause the consumer to install the product in a location or in a manner inconsistent with the consumer's preferences. The separate treatment of through-the-wall products and small duct, high velocity systems in today's rule is based in part on utility and performance considerations.

e. Impact of Lessening of Competition

This economic justification factor has two aspects: On the one hand, it assumes that there could be some lessening of competition as a result of standards; on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect and DOE must consider the Attorney General's views in determining whether an efficiency level is economically justified.

In order to assist the Attorney General in making such a determination, DOE provided the Attorney General with copies of the October 5, 2000, NOPR and the TSD for review. The Attorney General's determination, in a letter dated December 4, 2000, was discussed in the preamble to the January 22 final rule. 66 FR 7176, 7199–200. The Attorney General's December 4, 2000, determination is included in the Appendix to this notice of final rulemaking.

During the review conducted pursuant to the President's Regulatory Review Plan, DOE invited the Attorney General to submit supplemental views on the January 22 final rule. The Department of Justice, in a letter dated April 5, 2001, provided comments on whether the final rule effectively removed its concerns regarding possible lessening of competition that could result from the October 5 proposed standards. The Department of Justice's April 5, 2001, letter is also included in the Appendix to this notice. The Department of Justice concluded that the 13 SEER standards for heat pumps and air conditioners in the January 22

final rule still presented anti-competitive concerns. More specifically, the Department of Justice concluded that while the final rule's exclusion of niche products might alleviate competitive problems for manufacturers of those products, the Department of Justice remained concerned about the impact of the final rule on manufacturers of standard equipment who could not make 13 SEER equipment that would fit into space-constrained sites. The Department of Justice also concluded the January 22 final rule would have a disproportionate impact on smaller manufacturers of heat pumps. Finally, the Department of Justice was of the view that the 13 SEER standard for air conditioners presents the same kinds of anti-competitive problems as the 13 SEER standard for heat pumps, and urged DOE to adopt a 12 SEER standard for all products covered by the rule.

DOE submitted the July 25, 2001, supplemental proposed rule to the Department of Justice for comment. The Assistant Attorney General, Antitrust Division, responded in a letter dated October 19, 2001, (*see* Appendix to this notice) that the Department of Justice had concluded that the proposed 12 SEER standards would not adversely affect competition. This factor is discussed further in Section VI.E of this Supplementary Information.

f. Need of the Nation To Conserve Energy

DOE recognizes that energy conservation benefits the nation in several important ways. Enhanced energy efficiency improves the nation's energy security, strengthens the economy, and reduces the environmental impacts of energy production. As part of the analysis supporting today's rule, DOE estimated energy savings and the national consumer benefits and estimated reduction in emissions of pollutants and greenhouse gases resulting from those energy savings. *See* the October 5, 2000 NOPR for a qualitative discussion of how these standards affect energy savings and those benefits. 65 FR 59622–3. The amount of energy savings ultimately associated with a particular standard level is also affected by the effect of a given standard on competition and consumer cost. Selecting a standard level should take into account manufacturer—and therefore inevitably consumer—costs, in order to encourage robust competition and heightened introduction of newer, more efficient units into the inventory of units available for purchase and use by consumers.

g. Other Factors

Section 325(o) of EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant (42 U.S.C. 6295(o)(2)(B)(i)(VI)). Under this provision, DOE considered the potential improvement to the reliability of the electrical system and health effects caused by foregone air conditioner purchases. These issues are discussed in the October 5, 2000 NOPR (65 FR 59605); the January 22 final rule (66 FR 7195); and in the Discussion of Comments that follows. The Utility Impacts Analysis in Chapter 11 of the TSD describes the technical analysis used in estimating the effects of adopting new efficiency standards on installed generation capacity. As will be described in the Discussion of Comments, the Utility Impacts Analysis has been revised. Updated results are provided in Appendix M of the TSD.

VI. Discussion of Comments

A. Impact on Consumers

The record for this rulemaking includes numerous discussions of the distributions, extent, and type of burdens on the typical consumer as well as on low-income consumers. *See* 65 FR 59623–59624, 66 FR 7189–7190, and 66 FR 38834. In the January 22 notice of final rulemaking, DOE determined that most consumers, including low-income consumers, would likely benefit financially over the life of the equipment, but that all consumers would bear higher initial costs, and many consumers, though not the majority, would never recover the higher first costs in the form of savings in their utility bills. However, the previous Administration concluded that the national energy savings and the slight financial benefit to the typical consumer overrode any negative and maldistributed consumer impacts. Upon review undertaken in conjunction with President Bush's Regulatory Review Plan, DOE focused on analytical results showing that the benefits of the standards adopted in the January 22 final rule would accrue to a much smaller fraction of consumers, particularly low-income consumers, than is the case for recent standards for other products. Therefore, DOE sought to mitigate those burdens by proposing on July 25 a 12 SEER standard, which would reduce the increase in equipment cost compared to the 13 SEER requirements issued on January 22. *See* July 25 SNOPR, 66 FR 38828, 38834. DOE received extensive public

comments on this subject in response to the July 25 SNOPR.

1. Low-Income Consumers

As stated in the July 25 SNOPR, DOE is particularly concerned that new standards be designed to distribute their burdens and benefits as fairly as practical. Although some disparity is expected in any national standard, the disparity in impacts between low-income and typical consumers is of greater concern at more stringent efficiency standards because increases in first cost and increases in life cycle costs are felt more sharply by lower income consumers.

Many advocates of a 13 SEER standard argued that because a majority of low-income central air conditioner and heat pump consumers are renters, most would not bear the first cost increases associated with more efficient equipment. These comments asserted that landlords would have to absorb any first cost increase because rental prices are dictated by housing availability, real estate prices, and a number of other market forces as opposed to first cost increases in any single appliance. The comments also asserted that because landlords typically purchase the least expensive, and in turn, the least efficient equipment, stringent efficiency standards are one of the few options provided to renters to protect them from unduly high energy bills. (ACEEE, No. 284 at p. 3; Appliance Standards Awareness Project (ASAP), No. 244 at pp. 1–2; Austin Energy, No. 243 at p. 2; Consumer Federation of America (CFA), No. 246 at p. 2; NEEP, No. 273 at p. 3; State of Vermont, No. 268 at p. 3; Goodman Global Holdings (Goodman), No. 269 at p. 4; ASE, No. 282 at p. 4; California Energy Commission (CEC), No. 263 at p. 2; NRDC, No. 250 at pp. 17–18; Environmental Ministries of Southern California, No. 263 at p. 4; Texas Ratepayers' Organization to Save Energy (Texas ROSE), No. 241–SS at pp. 15–16; National Consumer Law Center (NCLC), No. 241–NN at p. 1; Texas Natural Resource Conservation Commission (TNRCC), No. 286 at pp. 1–2; American Geothermal DX, No. 241–HH at p. 1; EPA, No. 276 at p. 5). Goodman, Oregon Office of Energy (OOE), National Grid, and Texas ROSE stated that low-income consumers in general would benefit from stringent efficiency standards. Goodman argued that any first cost increase would be made up through lower energy bills, while Texas ROSE asserted that the stringency of the efficiency standard is immaterial as most low-income households would find buying a new central air conditioning unit a

prohibitive expense at any efficiency level. (OOE, No. 275 at pp. 4–5; Goodman, No. 269 at p. 4; National Grid, No. 241–OO at p. 2; Texas ROSE, No. 241–SS at pp. 12–16).

Countering the above comments, York International (York), Trane Company and American Standard Heating and Air Conditioning (Trane), Southern Company, ARI, Edison Electric Institute (EEI), Rheem Manufacturing (Rheem), Carrier Corporation (Carrier), and George Mason University Mercatus Center (Mercatus Center) all argued that the increased cost of more efficient air-conditioning equipment cannot be afforded by those consumers living on fixed or low incomes. For those low-income consumers that are elderly or of ill-health, Carrier and Mercatus Center stated that the increased first cost associated with more efficient equipment could cause these consumers to forego the purchase of new equipment leading to potential adverse health effects for this sub-population. With regard to low-income renters, both Trane and Southern Company maintained that landlords will pass on the higher first costs associated with more efficient equipment to renters. Southern Company elaborated by stating the “renters get it free” argument only has validity in the very short-term. In the long term, higher costs experienced by landlords will inevitably result in higher costs to their tenants. Southern Company asserts that DOE would be better served looking at cost-effectiveness from a direct-cost, societal viewpoint, and avoid speculating on changes in landlord profit margins decades from now. (York, No. 270 at pp. 2–3; Trane, No. 262 at pp. 4–5; Southern Company, No. 257 at p. 2; ARI, No. 259 at p. 2; EEI, No. 253 at p. 4; Rheem, No. 248 at p. 2; Carrier, No. 280 at p. 2; Mercatus Center, No. 242 at p. 11).

DOE believes roughly half of low income households are renters. The 1997 Residential Energy Consumption Survey (RECS) that was used as the basis for determining the impacts of increased efficiency standards on households estimates that 49.8 percent of low-income households with central air-conditioners or heat pumps are renters. What is at issue is the extent to which increased equipment costs will be borne by occupants of these households or by the building owners.

DOE examined existing literature on the economics of rental markets to determine whether any previous analyses might help resolve the disagreements on this issue.¹¹ The

literature provides expressions for determining the renter and landlord pass-through-fractions as a function of elasticities for long-run housing supply and demand. The renter pass-through-fraction defines that portion of a landlord's investment cost (such as the cost associated with more efficient air-conditioning equipment) that gets passed through to the renter in the form of an increased rental price. The renter pass-through-fraction is defined by the following expression:

Where,

$$\text{Pass-thru-Fraction}_{\text{Renter}} = \frac{e_s}{e_s - e_d}$$

e_s = elasticity of long-run housing supply and
 e_d = elasticity of long-run housing demand.

The landlord pass-through-fraction defines that portion of a renter's benefit due to a landlord's investment (such as utility bill savings associated with more efficient air-conditioning equipment) that get passed back through to the landlord in the form of an increased rental price. The landlord pass-through-fraction is defined by the following expression:

$$\text{Pass-thru-Fraction}_{\text{Landlord}} = \frac{-e_d}{e_s - e_d}$$

The existing literature provides a range of elasticities for long-run housing supply (0.3 to 0.7) and demand (–0.1 to –1.0). The literature suggests that there will always be some form of renter pass-through but not necessarily some form of landlord pass-through. As a result, the minimum and maximum pass-through-fractions are 23 percent and 121 percent, respectively, of a landlord's investment cost. As shown above, the literature suggests that it is possible that some landlords will not be able to pass on all investment costs, while other landlords may actually pass on more than 100 percent of these costs. Those landlords who are unable to pass on all of these added costs will, of course, be adversely affected by this rulemaking (unless they are directly responsible for the utility bills associated with air conditioning use), although their renters are much more likely to benefit. Landlords that would be adversely

landlord pass-through fractions as a function of elasticities for long-run housing supply and demand. Typical supply elasticities can be found in Pindyck, R. and D. Rubinfeld, *Microeconomics*, 2001, Prentice Hall (citing de Leeuw, F. and N. Ekanen, “The Supply of Rental Housing”, *AER*, Vol. 61, 1971, pp. 806–817). Typical demand elasticities can be found in Hanushek, E.A. and J.M. Quigley, “The Determinants of Housing Demand”, *Research in Urban Economics*, Vol. 2, 1982, pp. 221–242.

¹¹ Pindyck, R. and D. Rubinfeld, *Microeconomic Theory*, 2001, provides equations for renter and

affected may be more likely to seek alternatives, such as small capacity units or even delayed replacement of failed units. Those landlords that pass on more than 100 percent of the costs of new equipment could benefit from efficiency standards, but their renters are much more likely to be adversely affected. Since no study could be found that addressed the specific population of renters likely to be affected by this rulemaking, DOE believes there is insufficient basis to change its analytical methods or conclusions regarding the likely effects of central air conditioner and heat pump standards on low-income renters.

2. Electricity Prices

In proposing a 12 SEER standard in the July 25 SNOPR, DOE stated that a lower fraction of consumers would be negatively impacted in terms of life-cycle cost than under a 13 SEER standard. See 66 FR 28828.

Several comments disagreed with DOE's life-cycle cost conclusions, claiming that DOE's analysis significantly underestimates the benefits of the 13 SEER rule due to its failure to account for recent increases in electricity prices. The comments note that DOE based its seasonal price forecasts on electricity price data from 1996–97 that were adjusted downward using Energy Information Administration (EIA) projections of future annual electricity prices. Citing recent residential rate data from areas of the country that have undergone some form of electricity deregulation (e.g., Massachusetts, California, and the Northwest), the comments assert that DOE's electricity cost projections fail to recognize the significant summertime consumer price increases that are accompanying restructuring of the electric utility industry. For additional support, some comments refer to an analysis conducted by Synapse Energy Economics that demonstrated that summer daytime wholesale electric prices across the country averaged approximately 2½ ¢/kWh (kilowatt-hour) more than annual average wholesale prices. These comments conclude that if DOE's analysis were revised to include more recent electricity prices, the results would indicate that a 13 SEER standard represents a better choice for consumers and the Nation. (ACEEE, No. 284 at pp. 8–11; CFA, No. 246 at p. 2; Attorneys General of New York and Massachusetts, No. 277 at pp. 15–16; OOE, No. 275 at p. 3; Pacific Gas & Electric Company (PG&E), No. 274 at pp. 1–2; ASE, No. 282 at p. 4; Goodman, No. 269 at p. 2; National Rural Electric

Cooperative Association (NRECA), No. 278 at pp. 1–2; Environmental Ministries of Southern California, No. 236 at pp. 2–3; Texas ROSE, No. 241–SS at pp. 7–8; NCLC, No. 255 at pp. 2–4; Northwest Power Planning Council (NWPPC), No. 287 at pp. 1–3; Environmental Protection Agency (EPA), No. 276 at p. 4). Some comments further argue that the costs of electricity price increases due to air-conditioning are passed, in the form of higher rates, onto all consumers for all end uses, regardless of the importance of their role in creating the price increase. Thus, DOE's analysis should account for how lower air-conditioning consumption lowers electricity bills for all consumers and not only those that utilize air conditioners. (NEEP, No. 273 at pp. 2–3; NRDC, No. 250 at pp. 14–17).

Trane, ARI, and EEI all disagree that recent price increases due to electricity deregulation will lead to higher electricity rates in the long-term. For example, Trane asserts that competition will cause energy prices to consumers to remain stable. EEI adds that price collapses have recently occurred in some of the same regional markets which experienced rate increases. EEI also states that retail price caps have been instituted in many areas of the country that have been deregulated in order to shield residential consumers from the price fluctuations in the wholesale market. (Trane, No. 262 at pp. 14–16; ARI, No. 259 at pp. 33–34; EEI, No. 253 at p. 3).

Rather than speculate on how current volatility in energy markets will impact future electricity prices, DOE has consistently relied on EIA energy price forecasts and has used other forecasts, including the various EIA scenarios, to bound the energy prices used in the standards analysis. EIA's most recent Annual Energy Outlook (AEO) for the year 2002 recognizes that over the past year energy markets have been extremely volatile.¹² Recent energy market volatility as well as the economic slowdown and lower prices following the September 2001 terrorists' attacks in the United States have been incorporated in the short-term projections of the AEO2002. To be more specific regarding the AEO2002 assumptions, its projections assume a transition to full competitive pricing of electricity in States with specific deregulation plans. Other States are assumed to continue cost-of-service pricing. Price projections include the

contracts entered into by California to guarantee electricity supplies in the State. Increased competition in electricity markets is also represented through changes in the financial structure of the industry and efficiency and operating improvement. The impact of EIA's assumptions are evidenced from the average residential electricity price estimated by AEO2002 for the year 2001. The average rate estimated by AEO2002 for 2001 is 4.2 percent greater (or 0.3 ¢/kWh) than that estimated by the AEO2000. Although the AEO2002 short-term projections have taken into account recent events, EIA estimates that long-term volatility in energy markets will not occur from recent events or from the impacts of such future events as supply disruptions or severe weather. Again, this is evidenced from the average residential electricity price forecasts from the AEO2002. Starting in the year 2003 average rates are projected to drop below those forecasted by the AEO2000 and remain that way until 2010. After 2010 the rates forecasted by both the AEO2002 and AEO2000 are essentially the same. In terms of the consumer analysis, this means that the life-cycle results based on the AEO2000 price projections would remain virtually unchanged if the AEO2002 projections were to be substituted in their place.

With regard to Synapse Energy Economics' wholesale electricity price analysis, DOE does recognize that wholesale summertime electricity prices are on average 2½ ¢/kWh greater than average wholesale rates. But as was stated in the January 22 final rule, DOE cannot speculate as to how wholesale prices will be translated into retail prices to residential consumers. It is possible that this difference in wholesale rates will ultimately result in higher marginal energy prices for the operation of central air conditioners. However, several other assumptions about future electricity prices are equally reasonable. It is possible that increased competition will result in higher fixed charges for utility service and higher fixed charges would lower marginal rates. That is, under competition, utilities may recover more of their costs of supplying electricity to consumers from fixed charges on utility bills, thereby reducing the cost consumers have to pay for electricity being supplied at the margin. It is also possible that higher peak load prices for electricity would cause consumers to significantly alter the times at which they use air conditioning, thus reducing projected electricity costs (and cost savings). Finally, it is possible that the

¹² U.S. Department of Energy-Energy Information Administration (EIA), Early Release of the Annual Energy Outlook 2002. EIA website: <<http://www.eia.doe.gov/oiaf/aeo/>>.

recent trend toward increased retail level competition will slow or even stop. DOE recognizes that the Nation's electric utility systems are in the midst of major regulatory, structural and technological changes which are likely to have important effects on the marginal prices for electricity use that are charged to residential customers and that these effects may be particularly pronounced during periods of especially high (or low) electricity demand. However, given the many possible scenarios affecting the costs of operating central air conditioners, DOE has decided to retain for this rulemaking the existing method for estimating future marginal electricity prices. This analysis method utilizes the most current, comprehensive data available on the actual marginal rates paid by consumers and uses price forecasts that closely parallel the most current assessment published by DOE.

During the coming years, DOE intends to monitor carefully the actual changes in the marginal electricity rates being paid by consumers and other electricity users, and to look for any trends in these changes that could help improve DOE's analysis. For future efficiency standards rulemakings, DOE intends to use the most recent data available on marginal rates, considering emerging trends in such rates that result from significant changes in electricity rate design (such as fixed and variable charges, or time-of-use rates), metering and demand management technologies, equipment use load shapes, or in the allocations of costs among sectors.

Within approximately five years of the current rulemaking, DOE expects to complete another review of the efficiency standards for central air conditioners and heat pumps. During this period DOE hopes that sufficient data will become available to enable it to forecast with greater confidence the marginal rates for residential electricity users. If available, DOE expects to use such rates to support modified standards.

3. Installation Costs

The potential increase in installation costs associated with 13 SEER equipment was cited by DOE as one of the reasons for not proposing a 13 SEER standard in its July 25 SNOPR. *See* 66 FR 38836. Several comments disagreed with DOE's conclusion that installation costs could be significantly different between 12 and 13 SEER equipment. Goodman claims that because their 12 and 13 SEER equipment are similar in size, there is almost no difference in the installation costs associated with their 12 and 13 SEER systems. (Goodman, No.

269 at p. 3). American Geothermal DX, an HVAC contractor, asserts that, based on its experience, any cost difference between installing a 13 SEER unit over a 12 SEER unit would be minimal. (American Geothermal DX, No. 241-HH at pp. 1-2). Several other comments, in particular those from ACEEE, assert that DOE's treatment of the "footprint" issue is speculative, *i.e.*, DOE provides no evidence that installation costs will actually increase for 13 SEER equipment. With regard to space-constrained equipment, ACEEE adds that because DOE has already moved to isolate this type of equipment as separate product classes, it effectively dismisses any arguments asserting that the impact of space constraints would result in higher installation costs for "mainstream" 13 SEER equipment. (ACEEE, No. 284 at pp. 13-14; ASE, No. 282 at p. 5; NRDC, No. 250 at p. 23; National Grid, No. 241-OO at p. 2).

Trane, ARI, and Rheem all argue that 13 SEER equipment is significantly larger than 12 SEER systems. As a result, installation costs are significantly greater for 13 SEER units than for 12 SEER units. In particular, they state there will be many instances where it will be very difficult to physically fit larger indoor coils, needed to match outdoor 13 SEER condensing units, without retrofitting the air handler originally designed for a smaller, lower SEER indoor coil. (ARI, No. 259 at pp. 25-26; Trane, No. 262 at pp. 5-9; Rheem, No. 248 at p. 3).

Throughout the analysis DOE has assumed that installation costs would remain constant as efficiency increased. As stated in the January 22 final rule, DOE believes that even if installation costs do generally rise as the size and weight of equipment increases, manufacturers will have the incentive under new standards to reduce the size of 13 SEER equipment using various approaches, such as adopting variable speed and modulating capacity technologies, converting to microchannel heat exchangers, increasing the size of the unconstrained outdoor unit or indoor unit only, or changing the footprint or elevation of the unit. *See* January 22 final rule, 66 FR 7180. Although DOE still maintains that installation costs generally are unlikely to increase due to the above reason, as stated in the July 25 SNOPR, there is the possibility that substantial increases in installation costs due to larger and heavier 13 SEER systems may materialize for some consumers, especially for those replacing 10 SEER systems. *See* July 25 SNOPR, 66 FR 38836. As a result, DOE continues to believe the possibility of increased

installation costs is a factor that supports adopting the less costly 12 SEER standard.

4. Manufactured Housing Owners

York, ARI, and Nordyne Inc. (Nordyne) stated that consumers living in manufactured homes are especially vulnerable to the increased first costs associated with more efficient equipment. They asserted that manufactured homes are typically "starter" homes for low-to-middle income families where any increases in household expenses, including those associated with more efficient space-conditioning equipment, are difficult to afford. Because the life-cycle cost analysis made no explicit mention of this sub-population, they are concerned that DOE did not consider manufactured-home owners in its analysis. (York, No. 270 at pp. 2-3; ARI, No. 259 at p. 9; Nordyne, No. 264 at pp. 1-2).

DOE considered all household types utilizing central air conditioners or heat pumps in its consumer life-cycle cost analysis, including manufactured homes. Of the households with central air conditioners analyzed in the consumer life-cycle analysis, 4.5 percent were manufactured homes. For households with heat pumps, 6.1 percent were manufactured homes.

In its decision to propose 12 SEER standards for conventional products, DOE took into consideration the first cost impacts of higher efficiency standards to manufactured home owners. In particular, DOE was concerned that the 13 SEER standards issued in the January 22 final rule could cause manufactured home consumers to shift from heat pumps to other systems that include resistance heat systems. *See* July 25 SNOPR, 66 FR 38836.

B. Life-Cycle Cost and Payback Period

Although a majority of the comments concerning consumer impacts addressed either low-income impacts or the effect that electricity prices have on the number of consumers either benefitting or being burdened by increased standards, several comments expressed concerns over other elements of the consumer life-cycle cost analysis.

1. Product Lifetime

Energy Market & Policy Analysis, Inc. (EMPA) stated that DOE incorrectly used estimates of the full lifetime of the equipment rather than the time that the equipment may remain in the ownership and use of the initial owner. (EMPA, No. 241-LL at pp. 5-6).

In analyzing increases in efficiency standards, DOE is required by section

325(o)(2)(B)(i) of EPCA to use the full lifetime of the equipment for establishing the operating cost savings resulting from higher efficiency standards. The second factor in section 325 to be considered for determining whether the benefits of the standard exceed its burdens is "the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard." 42 U.S.C. 6295(o)(2)(B)(i)(II).

A retirement function with an average 18.4-year equipment lifetime was used in the life-cycle cost analysis for central air conditioners and heat pumps. As stated in the January 22 final rule, the basis of the 18.4-year equipment lifetime was a survey conducted on more than 2,100 heat pumps in a seven state region of the U.S.¹³ See 66 FR 7179–7180.

The survey determined not only the lifetime of a complete heat pump system, but the life of the original compressor as well. Although the system lifetime is on average over 18 years, the survey also showed that the original compressor lifetime was, on average, 14 years. Thus, the survey indicated that essentially all heat pump owners replaced their original compressor once in the lifetime of system.

Since the heat pump survey clearly indicates that the original compressor is replaced once in a system's life, DOE's analysis was based on the inclusion of a repair cost for the compressor. Conducting the analysis in this manner retains the average system lifetime of 18.4 years but explicitly addresses the replacement cost of the compressor, which is the most expensive component of a system. As indicated by the survey data, the compressor was assumed to be replaced in the 14th year of the system's life. Although a shorter equipment lifetime is possible, DOE has not been provided with more substantive data to support discontinuing its use of the above mentioned survey data. DOE believes that the survey data provides an accurate representation of central air conditioner and heat pump life. Although the survey was conducted only on heat pumps, the retirement function was also used as the basis for estimating central air conditioner

product lifetime. Because heat pumps are used during both the cooling and heating seasons, they generally incur more operating hours and more wear during the course of a year than air conditioners. Thus, the use of a heat pump retirement function for air conditioners likely underestimates their lifetime. Although heat pump and air conditioner lifetimes likely differ, DOE was unable to obtain any well substantiated data to determine whether air conditioner lifetimes are longer than those for heat pumps. Without such data, the heat pump retirement function was assumed valid for air conditioners.

2. Warranty, Maintenance, and Service Costs

EMPA stated that DOE made no attempt to collect or include warranty, maintenance, and service costs in the consumer analysis. (EMPA, No. 241–LL at pp. 5–6). On the issue of warranty costs, Mercatus Center adds that the reliability patterns of new components that are part of high efficiency products are less known, so warranty accruals may be significantly higher for these products (*i.e.*, 12 to 13 SEER equipment). (Mercatus Center, No. 242 at p. 8).

With regard to maintenance and service (or repair) costs, DOE did collect data or make reasonable assumptions to establish both types of costs.

Maintenance costs are costs to the consumer of maintaining equipment operation such as checking and maintaining refrigerant charge levels and cleaning heat exchanger coils. For the life-cycle cost analysis, maintenance costs were based on data from Service Experts, an HVAC service company. See TSD, Chapter 5. Maintenance costs were assumed not to change with increased efficiency, the rationale being that the general maintenance of more efficient products would not be impacted by the more sophisticated components that they contain.

Service or repair costs are costs to the consumer for replacing or repairing components which have failed. For baseline equipment (*i.e.*, 10 SEER) and equipment with efficiencies greater than 13 SEER, annualized repair costs were assumed to equal one-half the equipment price divided by the average lifetime (18.4 years). Equipment with efficiencies of 11 through 13 SEER were assumed to incur a one percent increase in repair cost over the baseline level. Because systems with efficiencies up to and including 13 SEER generally do not include sophisticated electronic components, repair costs were assumed to remain essentially flat from 10 to 13 SEER. As noted above in the discussion

of equipment lifetime, compressor replacement costs were also included in the analysis.

With regard to warranty costs, these costs were essentially considered by incorporating repair costs into the analysis. As noted above, a product that is less reliable or contains more expensive components was assumed to have a higher cost of repair over its lifetime. As stated in the October 5, 2000 NOPR, either the consumer or the warranty provider will bear that added cost directly through more frequent service calls or higher repair costs. See 65 FR 59599–59600. If the cost is covered by warranty, however, the warranty provider passes it back to future warranty holders in the form of slightly higher warranty prices. DOE believes the incremental increase in the price of the warranty is equal to, or just slightly higher, than the discounted present value of the incremental repair costs over the life of the warranty. Over the long term then, the average consumer always incurs higher repair costs, either directly or through higher warranty prices. Since the life-cycle cost analysis considers the present value of consumer life cycle costs on the average consumer, incremental repair costs and incremental warranty costs are the same, and interchangeable.

3. Markups

ARI, Trane, and York all believe that DOE greatly underestimated the manufacturer, distributor, and contractor markups used to derive consumer purchase prices. ARI maintains that the manufacturer markup should be approximately 1.35, as verified by a survey ARI conducted in the fall of 2000. Furthermore, ARI continues to believe that the distributor and contractor markups should be approximately 1.37, as determined by DOE in the 1999 Supplemental Advance Notice of Proposed Rulemaking (SANOPR). (ARI, No. 259 at pp. 23–25; Trane, No. 262 at pp. 10–11; York, No. 270 at p. 3).

As stated in the January 22 final rule, DOE did assume for the Manufacturer Impact Analysis that markups increase with increasing efficiency under a given standard level. However, for the consumer economic analyses, as the minimum standard level increases, DOE determined that the distributor and contractor markups on more efficient products do decrease. See January 22 final rule, 66 FR 7180.

DOE's analysis of distributor cost data revealed a measurable difference between the average aggregate markup on the entire set of direct business costs and the incremental markup on only

¹³ Bucher, M.E., Grastataro, C.M., and Coleman, W.R. "Heat Pump Life and Compressor Longevity in Diverse Climates." ASHRAE Transactions, 1990. 96(1): pp. 1567–1571.

direct equipment costs. In other words, for an incremental increase in the cost of the equipment, the markup required to cover the incremental cost increase is distinctly different than the average markup required to cover all business costs. The average aggregate distributor markup was determined to be 1.36 and is assumed to cover the direct business costs that are present at the current baseline (*i.e.*, 10 SEER) level. Note that the average aggregate distributor markup of 1.36 is approximately equal to the value used in DOE's analysis for the SANOPR. The incremental distributor markup was determined to be 1.11 and is assumed to cover incremental equipment cost increases, such as those associated with increases in equipment efficiency.

DOE's analysis of contractor cost data revealed a significant difference between the markup required for covering labor and equipment expenses and the markup required for covering only equipment expenses. The markup covering all business expenses was determined to be 1.53 while the markup for only equipment expenses was determined to have a mean value of 1.27. The 1.53 markup value covering all business expenses is approximately equal to the value used in DOE's analysis for the SANOPR. Because the life-cycle cost analysis breaks out the contractor's installation cost (*i.e.*, the cost to install the equipment) from the cost which is charged for the equipment, only the markup value of 1.27 is applicable for marking up the equipment. As with the distributor markup, a contractor markup associated only with an incremental increase in equipment cost was also determined. Since the incremental markup was shown to be close to the average value of 1.27, only the average markup value was used in the analysis.

As a result of determining lower distributor and contractor markups on incremental equipment cost increases, such as those associated with more efficient equipment, the overall markups decrease as efficiency increases. Although comments argued that overall distributor and contractor markups should not decrease, no data was offered to counter DOE's approach. Thus, DOE has retained its methodology for estimating both distributor and contractor markups. Appendix D of the TSD provides more detailed information on this issue.

4. Energy Use

a. Residential Energy Consumption Survey

EMPA asserted that DOE violated well-established statistical principles by basing the proposed standards on small subsets of data from EIA's Residential Energy Consumption Survey (RECS). As a result, EMPA concludes that DOE simply has no reasonable claim of validity for either the calculations or its analytical conclusions. (EMPA, No. 241-LL at pp. 2-4).

As stated in the January 22 final rule, as part of the process to improve the energy efficiency standards analysis, DOE is committed to use of sensitivity analysis tools to evaluate the potential distribution of impacts among different subgroups of consumers. DOE believes that RECS provides a nationally representative household data set which is suited for conducting the type of sensitivity analyses suggested by the Process Improvement Rule. Limiting the RECS households to those equipped with either central air conditioners or heat pumps, the life-cycle cost analysis performs a household-by-household analysis that predicts the percentage of households that will incur net life-cycle cost savings or costs from an increased efficiency standard. *See* January 22 final rule, 66 FR 7178-7179.

b. Rebound Effect

Mercatus Center alludes to what it termed the "rebound effect" when stating that more efficient air-conditioning due to higher SEER standards would cause consumers to use their equipment more often, thereby negating some of the energy savings realized from the more efficient equipment. (Mercatus Center, No. 242 at pp. 9-10). Assumed under the rebound effect is that consumers will use more efficient equipment more often because of the greater utility bill savings they will realize relative to less efficient equipment.

Although DOE recognizes that consumers may utilize more efficient equipment more often, the LCC analysis did not attempt to account for the possible reduction in energy savings due to a rebound effect. As a result, the LCC impacts detailed in today's final rule may overestimate actual consumer cost and energy savings that result from an increase in the minimum energy efficiency standards for central air conditioners and heat pumps.

5. Rebuttable Payback Period

NWPPC asserts that 13 SEER, at least for split system heat pumps, is economically justified. NWPPC states

the DOE has not justified why it should not adopt the HSPF 7.7 and SEER 13 standards for split system heat pumps since this level of efficiency satisfies the "rebuttable presumption" requirements of the law. (NWPPC, No. 287 at p. 3).

As noted in the July 25 SNOPR, DOE recognizes some standard levels for some product classes satisfy the rebuttable presumption requirements in section 325(o)(2)(B)(iii). But DOE points out that the statute requires DOE to use "the applicable test procedure" to calculate the payback periods for purposes of the rebuttable presumption. As explained in the October 5, 2000 NOPR, the annual cooling and heating energy consumption calculations based on DOE's test procedure are significantly greater than the weighted-average values from DOE's life-cycle cost analyses based on the 1997 Residential Energy Consumption Survey, used in other DOE analyses, including evaluation of consumer impacts. 65 FR 59596. For this reason, the payback periods presented in Section VII of this portion of the preamble, entitled "Analytical Results and Conclusions," are significantly longer than those calculated to determine whether the rebuttable presumption applies to these products. More importantly, DOE's economic justification analysis for a particular class of covered product involves consideration of factors other than the payback period. For example, as discussed in the July 25 SNOPR (66 FR 38837), one reason DOE did not propose Trial Standard Level 3 (12 SEER for air conditioners and 13 SEER for heat pumps) was the potential of those standards to cause heat pump owners to switch to resistance heating, and possibly adversely affect competition.

C. Shipments/National Energy Savings

1. Shipments Forecasts

Mercatus Center asserts that DOE's shipment model does not account for the reduced equipment sales that occur when consumers forego purchases due to the increased equipment prices resulting from higher efficiency standards. As a result of delayed consumer purchases, the energy savings to the nation would build up more slowly than forecasted by DOE. (Mercatus Center, No. 245 at p. 5). This is effectively an argument that the price elasticity for the air conditioner and heat pump market should be higher than what was assumed.

DOE has used historical saturation trends to establish price elasticities for the overall air conditioner and heat pump market. Higher saturation levels

are assumed to decrease price elasticity, which makes sales volume less sensitive to price increases. Over the past twenty years household saturation levels of central air-conditioning have increased, primarily due to the steady increase in real household incomes. In order to capture the effect that increased equipment price and household income have on equipment sales, the shipments model breaks the air conditioner market into the following segments: New construction, early (discretionary) replacements, regular replacements, extra repairs, and remodels. In the new construction market, the price of air conditioning has dropped over time relative to household income resulting in a corresponding increase in saturation to its current value of approximately 80 percent. Because of the high saturation in the new construction market, the purchase price elasticity for the new housing market is small relative to the early replacement market. But although the price elasticity is small, a decrease in shipments to the new construction market will still be likely when equipment prices increase (as we expect to occur under a new efficiency standard). As a result, for the case of a 13 SEER standard for split system air conditioners for example, shipments to the new construction market drop by approximately 3 percent. For comparison purposes, shipments to the early replacement market drop much more significantly (approximately 15 percent) as this market is far less saturated and the resulting purchase price is much more elastic. With regard to the other market segments, the regular replacement and extra repair market price elasticities are dependent on the age of the equipment in addition to price. Thus, the price elasticity for a relatively new air conditioner is much more elastic than that for a relatively old air conditioner. With regard to the remodel market (otherwise known as the market of stock homes without air-conditioning), historical data reveals that a relatively low number of non-air conditioned households purchase new air-conditioning equipment. Thus, like the early replacement market, the remodel market's price elasticity is relatively sensitive to first cost increases.

Because the price elasticities in the shipments model are based on actual historical data, DOE has retained the price elasticities developed for the central air conditioner and heat pump standards analysis.

2. Heat Rates

ACEEE asserts that DOE has severely underestimated the national energy

savings resulting from more efficient standards due to the marginal heat rates which were used to convert electrical energy savings at the site (*i.e.*, at the household or commercial building) into fuel savings at the source (*i.e.*, at the power plant). ACEEE contends that the value assumed by DOE in 2018 and beyond (5519 Btu/kWh) is well below the heat rate estimates provided by EIA (*e.g.*, 9617 Btu/kWh in 2020). Using the EIA heat rate estimate would lead to about a 2-fold increase in energy savings and reduction in pollution for 2020, with progressively smaller differences earlier. (ACEEE, No. 284 at pp. 9–10).

The standards analysis has used marginal heat rates calculated by using a version of EIA's National Energy Modeling System (NEMS–BRS)¹⁴ to translate end use electricity savings to primary energy savings. The marginal heat rate is calculated by imposing a load reduction to the appliance end-use being analyzed in NEMS–BRS and observing the change in primary energy use. As noted by ACEEE, the marginal heat rates used in the central air-conditioning analysis are lower than expected. One would expect the central air-conditioning marginal heat rate to be higher than those of more base load appliances (like clothes washers or electric water heaters) because this peak-use appliance displaces more expensive, less efficient generation. Further, this marginal displaced plant should be not unlike the inefficient plant in place today because most rapid technological change occurs in the base load. The key to understanding this apparent paradox is that this conversion rate does not represent a specific marginal generator or combination of generators, but is actually a conversion factor that incorporates several simulated effects resulting from the standard.

The primary reason as to why the marginal heat rate is lower than expected is that the overall rate of efficiency improvement of the power system with the standard in place is slower than estimated by EIA in the AEO Reference Case. While there are many effects of the standard, DOE's analysis shows the two major components of the standard's impact on the power sector are: (1) The direct

reduction in fuel burned in power plants and (2) the indirect effect whereby the slowing of electricity demand growth slows new investment, thereby impeding the rate of overall improvement in power sector efficiency. While this latter effect would seem to be trivial relative to the first, it grows significantly over time because fewer and fewer of more efficient generating plants are added to the power system. By the end of the forecast period, this effect becomes a significant drag on the primary energy savings of the standard, which explains why the marginal heat rate is less than that attributed to new technology. Further, it is a bigger drag on the benefits of peaking end-use efficiency improvements. These reduce peak demand more and slow investment more because the rate of new construction is heavily dependent on growth in peak demand. A more detailed discussion of this effect can be found in Appendix M of the TSD.

3. Fuel Switching

As discussed in the July 25 SNOPR, potential equipment switching from heat pumps to electric resistance heating due to high heat pump prices was cited as one of the reasons for not proposing a 13 SEER standard. The energy savings resulting from 13 SEER heat pumps would be eliminated if only a small fraction of heat pump owners (4 percent) switched to electric resistance heating. See July 25 SNOPR, 66 FR 38836.

ACEEE, NRDC, and NWPPC all disagreed that more efficient heat pump standards would cause consumers to switch to electric resistance heating. Both ACEEE and NRDC stated that if equipment switching was truly a concern, DOE should prevent such action not by lowering heat pump efficiency standards, but by promoting revisions to building energy codes to minimize the use of resistive heat. (ACEEE, No. 284 at p. 14; NRDC, No. 250 at pp. 18–20). ACEEE adds that DOE failed to account for the impact that electric resistance heating has on consumer energy bills (nearly doubling average annual heating bills) in their assessment of the potential of equipment switching. NWPPC claims that DOE overstated the potential of equipment switching if split system heat pump SEER standards were set higher than those for split system air conditioners. NWPPC states that the price difference between a heat pump and an air conditioner at the same SEER level is already very high (approximately \$1400). The extra price associated with a more efficient heat pump (approximately \$150 between 13

¹⁴ EIA approves use of the name *NEMS* to describe only an AEO version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that deviate from AEO assumptions, the name *NEMS–BRS* refers to the model as used here. For more information on NEMS, please refer to the National Energy Modelling System: An Overview 1998. DOE/EIA–0581 (98), February 1998. BRS is DOE's Office of Building Research and Standards.

and 12 SEER) is not enough to alter consumer purchase decisions. (NWPPC, No. 287 at p. 3).

York agrees with DOE that there is potential for equipment switching if the standards for heat pumps are set too high. York states that the higher price associated with more efficient heat pumps would force consumers to choose either resistance heat and the resulting higher utility bills, or fossil fuel furnaces that may have to operate on higher cost fuels with more volatile prices such as oil or propane. (York, No. 270 at pp. 3–4).

As stated in the January 22 final rule, a significant number of households use electric resistance heat, indicating the potential for equipment switching from heat pumps to resistance heat. *See* 66 FR 7180. Based on data from the 1997 RECS, a little over 14 percent of households with room or central air conditioning have either baseboard or forced air electric resistance heating compared to almost 10 percent of households which have heat pumps. The fact that such a large percentage of households currently use a combination of central or room air-conditioning with resistance heat to meet their space-conditioning needs supports DOE's view that there is a real possibility that some purchasers would choose to switch to resistance heat from heat pumps rather than pay the consumer prices associated with 13 SEER heat pumps. DOE has not attempted to estimate the number of consumers that might actually switch from heat pumps to resistance heating. Rather, DOE has determined that a mere 4 percent of heat pump households would need to switch to central air conditioners and electric resistance heating to negate the energy savings achieved from increasing the heat pump standard from 12 SEER/7.4 HSPF to 13 SEER/7.7 HSPF. Because such a small fraction of heat pump owners would need to switch to electric resistance heating to negate the energy savings realized from 13 SEER heat pumps, DOE believes the possibility of equipment switching is real enough to warrant its inclusion as a factor supporting a 12 SEER/7.4 HSPF standard.

D. Impact on Manufacturers

1. Cumulative Regulatory Burden

DOE considers that a standard level is not economically justified if it contributes to an unacceptable cumulative regulatory burden. The TSD contains information on cumulative regulatory burden (section 8.6 of the TSD), although as previously discussed, DOE did not explain how it considered

this information in promulgating the 13 SEER standard on January 22, 2001. The TSD shows that the burden on manufacturers due to all other recent or imminent Federal regulations exceeds \$479 million. DOE estimates the 13 SEER amendments to the standards for central air conditioners and heat pumps would contribute up to an additional \$303 million in manufacturer costs, bringing the total cumulative regulatory burden to as high as \$782 million. In light of that heavy burden, the July 25 SNOPR proposed 12 SEER standards that DOE estimates will reduce the expected financial burden on manufacturers from all new Federal and State regulations by \$144 million compared to the 13 SEER final rule of January 22.

ACEEE, NRDC, and EPA all argued that DOE overestimated the impacts to the industry due to cumulative regulatory burden. EPA focused on the impacts due to the phase out of HCFC-22 (the hydrochlorofluorocarbon used as a refrigerant) and cited its own analysis as well as an estimate from Goodman Manufacturing to claim that DOE's estimate of \$50 million per company is at least twice as high as warranted based on prior industry transitions and more recent trends. Referring to the costs incurred by the refrigerator industry in the mid-1980's to convert from CFCs to HCFCs, EPA suggests that a more reasonable estimate to phase out HCFC-22 is \$20 to \$30 million per company. EPA also cites Goodman's estimate that the combined cost of meeting a 13 SEER standard and transitioning from HCFC-22 is approximately \$25 million per company, half of DOE's \$50 million estimate for just converting to a new refrigerant. (EPA, No. 276 at pp. 2–4).

Because the industry has known for well over a decade of the impending phase out of HCFC-22, both ACEEE and NRDC claim that the costs for converting to a new refrigerant should be lower than DOE's estimate. ACEEE states that DOE seems to treat the costs of redesign for efficiency and redesign for refrigerants as additive, as though manufacturers would first redesign for efficiency (2006) and then for replacement refrigerants (2010). ACEEE believes this assumption would be demonstrably false as there is every reason to accomplish the two goals with a single re-engineering effort, both saving capital and improving time-to-market. ACEEE adds that since there is already fairly widespread use of an alternative refrigerant, R-410A, this strongly suggests that component manufacturers of compressors, coils, valves, lubricants, and all other critical components are already geared up and

supplying the manufacturers with the necessary pieces to assemble non-HCFC-based heat pumps and air conditioners. With regard to the costs to be incurred by the industry to comply with Clean Air Act amendments for coating large appliances, ACEEE asserts that much more data are needed before any definitive estimates can be made. (ACEEE, No. 284 at pp. 11–13; NRDC, No. 250 at pp. 13–14).

Counter to the above arguments, ARI states that DOE is correct to give greater weight to cumulative burden. ARI asserts that the cost impacts due to cumulative regulatory burdens will exceed DOE's estimate of \$479 million. ARI notes that various additional burdens to the industry were not quantified by DOE including: (1) Recently revised DOE efficiency standards for room air conditioners; (2) on-going DOE review of possible new minimum efficiency standards for residential furnaces; (3) DOE's adoption of standard levels related to ASHRAE 90.1–1999 (American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Standard 90.1 as revised in October 1999); (4) EPA's Metal Products and Machinery (MP&M) effluent guidelines and standards; and (5) EPA's allowance system for controlling production, import, and export of HCFCs. ARI states that DOE's own estimate that a 12 SEER standard would have \$144 million less cumulative burden than a 13 SEER standard warrants adoption of a 12 SEER standard. (ARI, No. 259 at pp. 10–13).

In reaching its conclusion on manufacturer impacts, DOE considered the cumulative regulatory cost imposed on air conditioner manufacturers under the various standards scenarios, including manufacturers' investment to meet the new standard. As noted above, DOE estimated the cumulative regulatory impacts on manufacturers to likely exceed \$782 million if a 13 SEER standard were adopted. This includes the \$303 million reduction in industry value due to a 13 SEER standard and \$479 million in other regulatory burdens, including costs associated with the HCFC phase out. It does not include other major Federal and State regulations that we listed but did not quantify.

The comments submitted by ACEEE, NRDC, and, in particular, EPA do not address the cumulative manufacturer impacts. Rather, the comments were limited to manufacturer's investment required to transition away from HCFC refrigerant. DOE's estimated \$50 million per company investment to comply with the HCFC phase out was based on

interviews with all seven major air conditioner manufacturers during 1998 and 1999 when the firms were asked specific questions regarding the costs of replacing HCFCs in their equipment. In contrast, ICF Consulting, in its analysis for the EPA, refers to mid-1980's estimated costs associated with phasing CFCs out of the refrigerator industry, without explaining the link between those costs estimates and ICF's estimated \$20 to \$30 million per company to phase HCFCs out of the air conditioner industry.

DOE believes that the cost to convert from CFC refrigerants used in residential refrigerators is substantially less than the cost to convert from HCFC-22 refrigerant used in central air conditioners and heat pumps. For example, compressor capacity and power input for central air conditioners and heat pumps is an order of magnitude larger than compressor capacity and power input needed for home refrigerators (2 to 5 horsepower for central air conditioners versus one-quarter horsepower for home refrigerators). For this reason alone, significantly higher conversion costs would be expected. Further, central air conditioner or heat pump components (compressors, coils and air handlers) comprise almost the entire product cost. In contrast, over 50 percent of the cost of a home refrigerator is embodied in such non-refrigerant components as the insulated cabinet, shelves and other storage components, and other accessories such as icemakers and through the door ice and drink dispensers.

DOE also believes refrigerant related design changes will result in greater impact on the overall product cost and competitive position for air conditioner manufacturers than will be the case for refrigerator manufacturers. Since HFC-410A refrigerant operates at substantially higher operating pressures than HCFC-22 refrigerant, a major system redesign is necessary with HFC-410A refrigerant to take advantage of the beneficial aspects of the 40 to 50 percent higher pressure and to minimize any deleterious effects. With the alternative replacement refrigerant HFC-407C, system efficiency is reduced by 5 to 10 percent compared to use of HCFC-22 refrigerant in the same system. Significant resizing and reconfiguring of components is required to restore efficiency levels.

Replacing CFC-12 refrigerant in refrigerators with HFC-134a refrigerant reduces system efficiency by only 1 to 2 percent, which is easily offset by higher the higher efficiency compressors available at the time of CFC to HFC

conversion. In contrast, replacing air conditioner compressors, whose efficiencies are already close to thermodynamic limits, with higher efficiency units to offset the impact of refrigerant related efficiency loss is not a viable option. Finally, there are fewer models in a typical appliance manufacturer's refrigerator product line than the number of residential central air conditioner and heat pump models (multiple efficiency level products) produced by a typical unitary air conditioner manufacturer. As a result, significantly more redesign and product validation is necessary for the unitary air conditioner manufacturers to convert their product lines and production from R-22 to either of the HFC blends.

ACEEE states that the rational approach to meeting the two regulatory requirements—new efficiency levels in 2006 and the phase out of HCFCs in 2010—is to do so simultaneously, rather than sequentially, 3 to 4 years apart. If both changes could be accomplished simultaneously, the investment would indeed be less than the cost of making the two changes separately. Although the characteristics of the new refrigerant, with significantly higher operating pressures, will add to the scope and cost of the development effort for the increased efficiency product families, in principle, product validation testing and retooling would occur only once, saving substantial resources.

The difficulty with this scenario is the competitive reality of the industry. Competition in the U.S. air conditioning industry is especially vigorous, with seven major manufacturers competing for business. Consumers have benefitted significantly from this, with real (inflation adjusted) prices having fallen steadily over the past 20 years, even during periods of rapid market growth. In addition, this level of competition in the domestic industry has provided no opportunity for foreign competition to displace main line HVAC products, preserving traditional manufacturing jobs in the U.S.

In 2006, in this environment of vigorous competition, each manufacturer will be faced with the choice of producing a cost optimized product line using HCFC-22 refrigerant or of also making the additional investment to convert to an HFC refrigerant, combined with meeting the increased efficiency standard level. It is clear that either HFC blend (R-407C or R-410A) will result in increased product cost (at comparable efficiency and performance level). If HFC refrigerant use would result in lower cost compared to HCFC-22, it is likely

that manufacturers would already have voluntarily converted. In fact, hardware cost increases are readily identifiable and the higher cost HFC refrigerant alone will add \$20 to \$30 to the direct manufacturing cost of each unit. Therefore, it is highly likely that one or more manufacturers will opt to use HCFC-22 in the majority of their product line between 2006 and 2009. In that situation, the resulting cost advantage will force the other manufacturers to follow suit to remain competitive and avoid market share loss. While most manufacturers produce 12 and 13 SEER HFC air conditioners, they are typically low volume products and the tooling for full scale mass production does not exist. To increase production of 12 SEER or 13 SEER units, manufacturers will need expanded tooling to produce those models. To obtain the least cost, manufacturers will need to use designs that are better optimized for mass production. Consequently, DOE believes that much of the redesign, validation, and retooling effort faced by the industry is likely to happen once for efficiency standards in 2006 and a second time for the HCFC phase out in 2010.

2. Financial Burdens Associated With New Efficiency Standards

As explained in the July 25 SNOPR (66 FR 38829), the 13 SEER standards in the January 22 final rule were projected by the TSD to result in a negative cash flow for the industry in the year preceding the new standards' enforcement. Moreover, DOE's analysis shows that 13 SEER standards would impose far greater financial burdens on manufacturers whose operating costs exceed the industry average. Those manufacturers typically engage in more research and development or provide additional sales or service support than do their lower operating cost competitors. Consequently, DOE proposed the 12 SEER standard to reduce the maldistribution of financial impacts on manufacturers and allow manufacturers to maintain a positive cash flow.

Trane concurred with DOE's action to reduce the maldistribution of financial impacts on manufacturers. Trane asserted that as efficiency is increased, a larger commodity market is created. This in turn reduces the market opportunities for companies that focus on value-added systems and services. Thus, the "volume" manufacturers (*i.e.*, lower operating cost manufacturers) benefit disproportionately. Trane also noted that under a 13 SEER standard, manufacturers who invest heavily in

research and development (R&D) would dedicate less funding to innovative programs, resulting in the entire industry focusing on the development of designs that address the absolute lowest commodity product. Trane's opinion was shared by Equipment Distributors. (Trane, No. 262 at pp. 2–4, 13–14; Equipment Distributors, Inc., No. 266 at p. 1).

NRDC disputed DOE's interpretation of the financial impacts to manufacturers by pointing out that DOE's own analysis undercuts the contention that the industry is impacted more severely under a 13 SEER standard. Referring to the TSD, NRDC notes that under two different scenarios (NAECA and Roll-up) lowering the standard from 13 to 12 SEER actually increases the burden to the industry (as measured by the industry net present value). (NRDC, No. 250 at pp. 20–22).

DOE disagrees with this comment. In its interpretation of manufacturer impacts, NRDC overlooks the important role that the efficiency mix assumptions play in the financial projections. In Section 8.4.8 of the TSD, we described the dynamics by which the profits of manufacturers with higher operating costs depend on the sale of premium products, and how those products are differentiable only at efficiency levels higher than the baseline. The closer the baseline unit is to the technological limit, the fewer consumers will "buy up" to a higher efficiency. For more and more consumers, the baseline will be the cost-effective option, and those consumers who wish to "buy up" will have fewer options and less financial incentive to do so. For these reasons, DOE assumed the Roll-up efficiency scenario to be the most probable for 13 SEER standard levels and the NAECA efficiency scenario most probable at 12 SEER standard levels. The resulting cumulative change in industry net present value (NPV) is negative \$300 million at 13 SEER levels compared to negative \$199 million at 12 SEER levels.

NRDC's interpretation of manufacturer impacts also overlooks short-run cash flow impacts of the standards. While NPV is useful for evaluating the long-term effects of new standards, short-term changes in cash flow are also important indicators of the industry's financial situation. The annual cash flow impacts at 13 SEER are \$31 million more than at 12 SEER and turn the absolute cash flow negative. Depressed cash flow can strain the industry's access to capital or cause investors to flee.

OOE, Goodman, and ACEEE all claim that the industry impacts due to 13 SEER standards cannot be too severe as

the technologies required to comply with the standard are conventional and well known. (OOE, No. 275 at p. 3; Goodman, No. 269 at p. 3; ACEEE, No. 284 at p. 7). Goodman specifically states that the only difference between a 10 SEER, 12 SEER, and 13 SEER units is a little more copper and aluminum used in manufacturing different sized coils.

DOE believes it is erroneous to conclude from the fact that technologies required to comply with standards are conventional and well known that it is a trivial exercise to increase production volumes to a level capable of satisfying the entire U.S. demand for air conditioners. Sales of 13 SEER equipment and higher are only 3 percent of all equipment sold and large investments would be required to convert all production to these levels. Furthermore, as previously described, much of the industry's financial health today depends on sales of 12 SEER equipment.

3. Small Manufacturers

The issue of how higher efficiency standards impact small manufacturers also drew several comments. The Department of Justice's April 5, 2001, letter to DOE regarding the potential effect on competition of new central air conditioner and heat pump efficiency standards stated that some small manufacturers would be disproportionately impacted under a 13 SEER standard, and noted that 100 percent of their current product line would fail to comply with the new efficiency requirement. The Department of Justice also stated that manufacturers of equipment for space-constrained installation sites (such as manufactured housing) would also be disproportionately impacted by a 13 SEER standard (DOJ, No. 285 printed in Appendix of this notice).

Goodman asserted that moving to a 13 SEER would not be a hardship to small manufacturers. Goodman claims that 13 SEER technology has been available to both large and small manufacturers for approximately 15 years. Goodman also points to the fact that Goettl Air Conditioning, a small manufacturer based in Arizona, supports the 13 SEER standard. (Goodman, No. 269 at p. 3). PG&E concurs with Goodman's statements. (PG&E, No. 274 at p. 4). NRDC asserts that higher efficiency standards encourage competition by shaking up the cozy arrangements that the bigger companies have drifted into, requiring manufacturers either to invest in building new components or to purchase new components from other suppliers. They claim that this provides smaller, nimble manufacturers an

opportunity to unseat large but slow-adapting competitors. (NRDC, No. 250 at p. 31).

Both ARI and Rheem agree with the Department of Justice's statements regarding small manufacturers. Rheem states that small manufacturers will most likely not be able to afford the redesign and retooling of their equipment and manufacturing facilities to meet the 13 SEER standard. ARI quotes DOE's TSD in stating that "small manufacturers engaged in the production of conventional equipment would find it difficult to overcome the financial and technical burdens associated with the transition, and could decide to exit the market." (ARI, No. 259 at pp. 10–11; Rheem, No. 248 at p. 3).

With regard to the manufacturers of equipment for the manufactured housing industry, both ARI and Goodman agree that products for markets like manufactured housing, where space constraints limit efficiency gains achieved with conventional technology, should be granted an exemption from higher efficiency standards. (ARI, No. 259 at p. 8; Goodman, No. 269 at p. 3).

The Department of Justice's concerns relate to disproportionate impacts on small manufacturers. Most small manufacturers produce only indoor coils or niche product lines. For small manufacturers who produce coils only, there are no intensive incremental technological or capital requirements for them to increase the efficiency of their products and DOE does not expect them to face any incremental burden as a result of the new standards. However, DOE has documented that manufacturers of niche air conditioning products, such as through-the-wall equipment and small duct, high velocity systems, face special technological and financial considerations compared to those faced by the major air conditioner producers. Consequently, new efficiency standards could be more detrimental to the financial situation of niche product manufacturers than of major manufacturers. Technical considerations are typically more important for certain niche manufacturers than for major manufacturers and have more severe consequences related to increased production costs or loss of sales volume due to increased price. Overall, if provisions were not made in the standard for niche products that face severe technological constraints, we would expect their impacts to be disproportionate to those on the industry as a whole. In today's rule, DOE is establishing separate product

classes for through-the-wall equipment and small duct, high velocity systems, which will be required to meet a lower SEER. DOE believes this meets the Department of Justice's concern regarding the impact of more stringent standards on small manufacturers.

DOE recognizes that products used for manufactured housing and modular housing also face space constraints. In its decision to propose 12 SEER standards for conventional products, DOE took into consideration the impacts of higher efficiency standards on the manufacturers of manufactured housing and modular housing products. For these applications, products at the 12 SEER level are currently on the market. DOE has concluded that, at the 12 SEER level, there is no need for a separate class for products used mainly in manufactured or modular housing.

4. Manufacturer Cost Estimates

Several comments asserted that DOE's manufacturing cost estimates derived from the reverse engineering analysis were too high. The comments stated that economies of scale in production and competitive forces will result in lower costs for the more efficient equipment as compared to pre-implementation estimates. (ACEEE, No. 284 at p. 2; CFA, No. 246 at p. 1; NCLC, No. 241-NN at p. 1). OOE specifically states that the cost of the commodity product at a minimum standard level cannot be appropriately characterized by looking at the mean or median manufacturer cost estimates from the reverse engineering analysis. (OOE, No. 275 at p. 3). Goodman states that their incremental cost for producing a 13 SEER unit is \$100 and is comparable to DOE's estimate. (Goodman, No. 269 at pp. 3-4).

The reverse engineering analysis does in fact take into account economies of scale by considering larger production volumes for more efficient products after implementation of the new standards. In its production modeling, DOE also considered that manufacturers would cost-optimize their production at the new level because of more intense competition at that level. We expect this competitive pressure to drive manufacturing costs and this is illustrated by the results of the reverse engineering analysis which fall within the ARI range and nearer to the ARI minimum.

ARI, Trane, York, and EEI disagree with the above comments and assert that DOE's manufacturing cost estimates are too low. Trane states that the reverse engineering analysis was based on too small of a sample of units and eliminated units which fell out of the

range of costs bounded by the manufacturers' submission. Trane nevertheless thinks that, despite its shortcomings, the reverse engineering analysis essentially confirmed cost levels submitted by ARI. However, Trane recommends that DOE utilize the cost data submitted by ARI. EEI concurs with this conclusion. (Trane, No. 262 at 9-10; EEI, No. 253 at p. 2). ARI states that it surveyed its manufacturer members after DOE issued its January 22 final rule. The results of the survey indicate that: (1) DOE has underestimated the baseline manufacturer costs by approximately 30 percent and (2) the additional cost of a 13 SEER split air conditioner over a 12 SEER is not \$122 as estimated by DOE, but is at least approximately \$305. ARI also refutes Goodman's claim that the amount of copper and aluminum needed for a 13 SEER unit is insignificant. In reviewing Goodman's current technical literature, ARI states that on average a Goodman 13 SEER split air conditioner weighs 44 pounds (18 percent) more than a 12 SEER system. More specifically, Goodman's 13 SEER condenser and evaporator coils are on average 20.2 percent and 11.5 percent heavier than the condenser and evaporator coils from their 12 SEER unit, respectively. (ARI, No. 259 at pp. 23-25). York states that the reverse engineering analysis is flawed because it focused on one size of equipment, a 3-ton unit and they believe that the whole range of equipment should have been analyzed, as size becomes much more problematic and costly at higher capacities. (York, No. 270 at p. 3).

DOE believes that the reverse engineering analysis is based on a sufficient equipment sample size to capture variability in design, manufacturing practices and costs across the range of products that would be subject to new standards. The equipment models were selected to be representative of the costs to manufacture existing baseline models and to capture the costs to manufacture products at potential new standards levels. To select representative equipment samples for the reverse engineering analysis, DOE requested that manufacturers identify equipment in their product lines most appropriate for this purpose. Four major manufacturers submitted design data for split cooling-only equipment, and three of those submitted design data for the other classes as well. This submission process yielded information on 62 models. DOE selected an additional nine models from catalogs of those and other manufacturers and also used the

ARI Product Attribute Database and technical literature to describe the efficiency-related attributes of those products. Additionally, from the group of manufacturer submittals, three units were purchased for extensive disassembly and inspection. In their comment ARI does not explain how it derived baseline costs (estimation method, models included, product features, etc.), making an assessment or comparison to DOE's costs impossible. In contrast, the reverse engineering derivation method and resulting disaggregated baseline data are transparent and have been reviewed extensively by stakeholders.

Several comments also focused on the issue of productivity gains and asserted that these gains would lower manufacturing costs below the levels estimated by DOE. ACEEE, ASE, and OOE all refer to historic changes as shown by the U.S. Census Bureau's Current Industrial Reports series and state that air conditioner costs to the manufacturer have declined at a rate of 1.7 percent annually over the 1994-1998 period. They assert that DOE should include this rate of cost reductions in its analysis. They add that the Census figures are probably conservative as they ignore the fact that manufacturers tend to find ways to substantially increase productivity when standards take effect in order to reduce the impact of standards-induced cost increases. In making this claim, the comments cite DOE's cost estimates from the 1980's for meeting the 10 SEER standards that took effect in 1992. Rather than having any cost impacts, they assert that the 1992 standards resulted in essentially no change in product costs. (ACEEE, No. 284 at pp. 4-8; OOE, No. 275 at p. 3; ASE, No. 282 at pp. 3-4).

Although NRDC recognizes that the reverse engineering model accounts for economies of scale, it states that it does not account for any "learning-curve" effect. Thus, as cumulative production of high efficiency units increases, the reverse engineering model merely scales up the costs rather than factoring the downward effect that "learning" has on production costs. (NRDC, No. 250 at pp. 31-32). Goodman also alludes to the "learning-curve" when it states that when a unit meeting a new standard is produced in volume, it allows the manufacturer to run its plant more efficiently and pass the resulting cost savings on to the consumer. (Goodman, No. 269 at pp. 4-5). Trane, Rheem, and Lennox International, Inc. (Lennox) all refute the contention that productivity gains will materialize. Trane asserts that earlier hard won productivity gains

were produced by the industry through untold millions spent on R&D. These expenditures reduced the cost to produce the entire product line, but did little to reduce the material-driven incremental costs of efficiency upgrades. Likewise, any cost reductions likely to occur in the next decade will have significantly greater impact on the overall consumer cost structure than on the cost and price increment between successively higher efficiency levels. Rheem states that under a 13 SEER standard only industry profits will be reduced, lessening the money available for research and design of new products to meet other upcoming standards, *i.e.*, HCFC phase-out, new commercial standards, new gas and oil furnace standards. (Trane, No. 262 at pp. 10–11; Rheem, No. 248 at p. 3; Lennox, No. 272 at p. 2).

DOE has not included unspecified productivity improvements or “learning-curve” cost reductions in its analysis. DOE does not believe historical price trends for unitary air conditioners, or other products, can be applied to forecast equipment costs where there are no data to indicate what factors resulted in the observed trends or that the trends will continue. Furthermore, without specific cost information, it is impossible to tell if productivity improvements would apply equally to baseline costs and standards induced incremental costs. Therefore, without specific data on the nature and magnitude of cost impacts, DOE will not apply a productivity improvement factor in this rulemaking or other rulemakings.

E. Effect on Competition

Several comments argued that DOE was unduly concerned that 13 SEER standards would lead to industry consolidation. NRDC claimed that the 13 SEER standards would actually enhance competition relative to the existing 10 SEER standards because economic losses imposed on higher-cost producers would force them to be more competitive. (NRDC, No. 250 at pp. 20–22). OOE adds that industry consolidation occurs regularly in all sectors of the economy. In the context of the various factors that influence industry consolidation, OOE asserts that it is unreasonable for DOE to claim that the incremental effects of efficiency standards can have any measurable effect on the industry. (OOE, No. 275 at pp. 3–4). PG&E cites third party coil manufacturers’ response to PG&E’s high efficiency rebate programs as support for the view that these small coil manufacturers can supply the efficiency combinations needed to meet new

standards. By extension, PG&E asserts that 13 SEER standards would foster manufacturing diversity by providing the coil manufacturers more business. (PG&E, No. 274 at p. 3).

Countering the above claims, ARI, Trane, and the U.S. Small Business Administration (U.S. SBA) asserted that a 12 SEER standard would have less of an anti-competitive impact than the 13 SEER standard. (ARI, No. 259 at pp. 3–4, 25; Trane, No. 262 at pp. 2–4, 13–14; U.S. SBA, No. 234 at p. 1). Both ARI and Trane cited the Department of Justice’s April 5, 2001 letter to DOE regarding the anti-competitive impacts of 13 SEER standards in claiming that the industry impacts due to 13 SEER standards are too severe. ARI additionally stated that DOE’s failure to obtain a determination by the Attorney General of the anti-competitive impact of the 13 SEER standard prior to issuing the January 22 final rule is an appropriate basis to withdraw the 13 SEER decision. The Department of Justice (DOJ) submitted comments on DOE’s July 25, 2001 SNOPR which concluded that the 12 SEER proposal would not adversely affect competition. (DOJ, No. 285 printed in the Appendix to this notice).

In establishing the new standards, DOE considered several factors which have a potential bearing on industry competition and consolidation. For each trial standard level DOE considered: Changes in manufacturer net present value; cumulative regulatory burden; and changes in annual cash flow. To further capture competitive effects, DOE considered differential impacts on three sub-groups of manufacturers, since higher efficiency standards will affect each group of manufacturers differently. “Low Operating Cost Manufacturers” observe a low cost, commodity-product strategy and achieve a higher operating profit margin on their baseline equipment. DOE’s analysis indicates that this group of manufacturers will likely benefit from higher standards. “High Operating Cost” manufacturers typically place more of an emphasis on product differentiation than cost leadership. For this group of manufacturers, higher standards reduce opportunities for product differentiation and lower profitability. Finally “Small Manufacturers” fall into two groups; manufacturers of equipment for niche markets and manufactures of indoor coils and fancoil units. As previously stated in Section VI (D) (3), we do not expect coil manufacturers to face any incremental burden as a result of new standards. Also we stated that impacts on niche manufacturers have been largely addressed through the creation

of separate product classes for products used in space contained applications.

In arriving at today’s decision to adopt a 12 SEER standard, DOE relied on the Department of Justice’s expert opinion that a 13 SEER air conditioner and heat pump standard raises competitive concerns (April 5, 2001 letter), and that a 12 SEER standard would not adversely affect competition (October 19, 2001 letter). DOE also factored into consideration the serious concerns regarding potential anti-competitive effects at higher trial standard levels presented in the TSD. DOE’s analysis demonstrates that both High and Low Operating Cost Manufacturer groups would experience negative cash flows in the years leading up to the new standard under TSL3 and TSL4, but only the higher operating cost group is expected to suffer a long term decline in value, cash flow, and return on invested capital. Since Low Operating Cost Manufacturers would likely benefit from 13 SEER standards, most of the total financial burden due to the standards would need to be borne by High Operating Cost Manufacturers. The differential impact between the subgroups is \$238 million at 12 SEER and rises to \$429 million at 13 SEER. Due to this probable maldistribution of industry impacts at 13 SEER, DOE was particularly concerned that either accelerated industry consolidation (*i.e.*, less competitive market) or the stifling of innovation could occur.

F. Effect on Utility or Performance

1. Dehumidification

The only comments regarding product utility pertained to the impacts that more stringent standards may have on the ability of air-conditioning equipment to properly dehumidify. Both Southern Company and Mercatus Center claim that the lower latent cooling capacity inherent in larger, more efficient single speed equipment would result in dehumidification problems in humid climates. (Southern Company, No. 257 at pp. 3–4; Mercatus Center, No. 242 at p. 8).

As stated in the October 5, 2000 NOPR, ARI research has demonstrated for hundreds of systems that latent heat removal is not obviously impacted by increases in equipment efficiency at rated conditions (*i.e.*, 95°F outdoor temperature).¹⁵ See 65 FR 59611–59612. Nonetheless, DOE recognizes the humidity control problems that exist in the southern region of the U.S. For the excessive humidity conditions commonly experienced in the South,

¹⁵ D. Godwin. 1998. “Latent Capacity of Unitary Equipment.” ASHRAE Transactions 98(2).

the equipment may very likely not provide adequate dehumidification. Equipment efficiency should not be viewed as the sole source of the problem, however. Proper installation and maintenance practices also likely play a large role in the equipment's performance, as well as other factors, such as the duct system and the building shell characteristics. All these factors play a role in how a system dehumidifies. For these reasons, DOE does not believe the 12 SEER standard adopted today will have an appreciable effect on the performance of central air conditioners, and any problem with dehumidification can be dealt with in a variety of ways other than lowering the energy efficiency standard.

G. Electric System Reliability/Peak Power

1. Peak Power

As part of its analysis to determine the impacts of amended efficiency standards, DOE quantified how increased standards affected installed generation capacity, *i.e.*, reduction in electrical power demand. In response to DOE's proposal to withdraw the January 22 final rule, several comments expressed concern that the 12 SEER standard would have less of an impact on peak power demand than the 13 SEER standard. (Austin Energy, No. 243 at p. 1; State of Connecticut, No. 279 at p. 1; Attorneys General of New York and Massachusetts, No. 277 at pp. 15–16; New York State Energy Research and Development Authority (NYSERDA), No. 252 at p. 1; State of Vermont, No. 268 at p. 3; PG&E, No. 274 at p. 3; State of Nevada, No. 271 at p. 2; National Grid, No. 241–OO at p. 3).

Regardless of SEER level, ACEEE asserted that DOE significantly underestimated the peak demand impacts of more efficient air conditioners. Specifically, ACEEE states that DOE's model to estimate peak power impacts, NEMS–BRS, uses load shapes that underestimate the effect that

residential central air conditioners have on peak power by a factor of more than two. To correct this problem, ACEEE recommends correcting NEMS–BRS with load shape data that is more nationally representative of central air conditioner power consumption. ACEEE specifically recommends load shape data that has a Conservation Load Factor (CLF) of 0.104. (ACEEE, No. 284 at pp. 8–11).

Both EEI and Southern Company assert that a 13 SEER standard could actually increase peak power demand. EEI states that for units rated at 13 SEER and higher, there is no correlation between SEER and EER.¹⁶ So if the standard was raised to 13 SEER, EEI believes it is likely that the manufacturers would use technologies to raise SEER values and lower EER values, assuming it would lower their production costs. Thus, the higher SEER values could very easily lead to lower EER values, resulting in reduced energy savings in warmer climates, increased peak demands associated with residential systems in all climates, and increased need for peaking power plants. (EEI, No. 253 at pp. 2–3). Southern Company adds that the reduction in peak demand from higher efficiency standards is so long-term as to have no bearing on current problems. Thus, it is entirely possible that the higher efficiency levels could exacerbate a supply glut in the regions now experiencing shortages ten to fifteen years from now. (Southern Company, No. 257 at p. 3). Mercatus Center believes that higher SEER standards would cause more people to use their air conditioners more due to their lower operating costs. The result during a heat wave could increase overall air conditioning usage, increasing peak demand and the risk of a blackout, and leaving everyone without air conditioning. (Mercatus Center, No. 242 at pp. 9–10).

First, in response to the comments submitted by EEI and Southern

Company, DOE has demonstrated in its technical analysis (*See* TSD, Chapter 4) that in the efficiency range of 10 to 13 SEER, the EER, on average, increases proportionally to the SEER. Thus, DOE maintains that higher standards of up through 13 SEER will yield progressively greater peak demand reductions. Mercatus Center's claims regarding increased equipment sales leading to higher overall air conditioner use are not substantiated. As presented earlier in the shipments forecasts discussion, due to higher consumer purchase prices, DOE's shipments model forecasts declining rather than increasing sales due to more efficient standards. Thus, DOE concludes that there is a very low probability that increased standards could actually lead to an increase in peak demand.

As stated in the January 22 final rule regarding peak demand impacts, DOE recognized that more research was needed to resolve the issue of whether NEMS–BRS accurately estimates the peak demand reductions resulting from air conditioner efficiency standards. *See* 66 FR 7182. To resolve this outstanding issue as well as address those comments submitted by ACEEE in response to the July 25 SNOPR, DOE conducted a comprehensive review of the end-use load shapes used by NEMS–BRS, not only for the residential sector, but for the commercial, industrial, and transportation sectors as well.¹⁷ DOE discovered a number of problems associated with the specific load shapes. In the case of the residential air-conditioning end-use, DOE determined that a non-representative load shape was assigned to it. This non-representative load shape peaks in October and has a correspondingly high CLF. As discussed in the January 22 final rule, the CLF was first introduced by researchers at Lawrence Berkeley National Laboratory to allow for the straightforward calculation of the peak demand avoided from a given amount of energy savings.¹⁸ The CLF is defined as:

$$\text{CLF} = \frac{\text{Annual Site Energy Savings (kWh)}}{\text{Peak Load Savings (kW)} \cdot 8760 \text{ hours}}$$

Thus, a conservation technology that saves a constant amount of power on a continuous basis has a CLF of 1.0.

Because air conditioning use occurs most often during times of peak demand, the CLF is significantly lower.

The lower the CLF, the greater the amount of peak load savings achieved

¹⁶ EER, Energy Efficiency Ratio, is a steady-state measure of energy efficiency which determines efficiency at a prescribed outdoor temperature (95°F), and is one of the test conditions in the DOE test procedure used to develop the SEER. EER is generally thought of as an efficiency descriptor that indicates the level of performance during periods

when electricity use by air conditioners is at its peak.

¹⁷ *Alternative Sectoral Load Shapes for NEMS*, Department of Energy-Energy Information Administration, Washington, D.C., August 2001.

¹⁸ *Conservation Screening Curves to Compare Efficiency Investments to Power Plants*:

Applications to Commercial Sector Conservation Programs, Lawrence Berkeley National Laboratory, Berkeley, CA, August 1990, published in the Proceedings of the 1990 ACEEE Summer Study on Energy Efficiency in Buildings, Authors: J. Koomey, A. Rosenfeld, and A. Gadgil.

for a given amount of annual energy savings. See 66 FR 7181.

As a result of discovering several problems with the load shapes within NEMS-BRS, an alternative set of sectoral end-use load shapes were assigned to the 2002 version of NEMS-BRS that were distinctly different than the load shapes used in prior versions of the model (including the 2000 and 2001 versions). For example, in the case of the residential air-conditioning end-use, the alternative version consists of thirteen regional load shapes based on regions defined by the North American Electric Reliability Council (NERC) as compared to the single national load shape used in prior versions. Depending on the region of the country, the thirteen air-conditioning load shapes have CLFs ranging from 0.063 to 0.183 and generally peak in either July or August. Although the alternative load shapes specific to the residential air-conditioning end-use are more representative (e.g., the loads peak during the summer months), switching to the entire set of alternative sectoral end-use load shapes results in smaller peak-to-average system loads. As a consequence, the overall built-up system load shapes using the alternative sectoral end-use load shapes have less pronounced peaks than those that are used in prior versions of NEMS-BRS. Because the built-up system loads within the 2002 version of NEMS-BRS have less pronounced peaks, the impact of reducing the energy use on a relatively peaky end-use like residential air-conditioning (such as through increased efficiency standards) will have less of an affect on overall system capacity.

New NEMS-BRS standard case runs were conducted with the entire set of alternative sectoral end-use load shapes, including the updated residential air-conditioning load shapes, to determine their impact on system capacity. These new runs were conducted with the 2000 version of NEMS-BRS by replacing the existing set of sectoral load shapes with the alternative versions. As expected, the installed generation capacity reductions based on the new NEMS-BRS runs are lower than those produced for the January 22 final rule. In the case of today's final rule, the installed generation capacity reduction is now estimated to be 8.7 GW as opposed to the 10.6 GW provided in the January 22 final rule. A complete set of updated installed generation capacity reduction impacts can be found in Appendix M of the TSD.

2. Reliability

As stated in the July 25 SNOPR, DOE has considered as a benefit the potential of the proposed standards to improve the reliability of the electric generation and distribution system by reducing the need for installed generation capacity. See July 25 SNOPR, 66 FR 38841.

Several comments, while not disputing DOE's conclusion that air conditioner standards would improve electric system reliability, argued that the potential for improving reliability would be reduced by going forward with the proposed standards (12 SEER) instead of those standards issued in the January 22 final rule (13 SEER). (ACEEE, No. 284 at p. 2; NRDC, No. 250 at p. 23; NEEP, No. 273 at p. 1; ASE, No. 282 at p. 2; CEC, No. 263 at p. 1; National Association of Regulatory Utility Commissioners (NARUC), No. 260 at p. 2).

Southern Company, which states that raising the standard from 12 to 13 SEER will have minimal effect on peak demand growth, believes this efficiency increase will have even less effect on reliability, because there is not a direct relationship between peak demand growth and reduced electric system reliability. The Southern Company claims that the reduction in peak demand from higher efficiency standards is so long-term as to have no bearing on current problems. It is entirely possible that the higher efficiency levels could exacerbate a supply glut in the regions now experiencing shortages ten to fifteen years from now. (Southern Company, No. 257 at p. 3). For different reasons, Mercatus Center also argues that higher efficiency standards would not improve and could possibly reduce electric system reliability. As stated in their arguments pertaining to peak demand impacts, they believe higher standards could lead to increased use of air-conditioning products due their lower operating costs. During periods of peak demand this could lead to an overall increase in air-conditioning. The resulting increase in peak demand heightens the risk of blackouts. (Mercatus Center, No. 242 at pp. 9–10).

DOE agrees with the assertion of the Southern Company that the primary effects of the proposed efficiency standards are so long term (more than 10 years in the future) that they are very unlikely to have any significant effect on electric system reliability. While DOE still believes that near term improvements in energy efficiency can help improve the reliability of systems that now have inadequate generating or transmission capacity (e.g., California),

the primary effect of energy efficiency standards is likely beyond the long-term planning horizon of most electric systems. This means that long term electric system reliability is determined primarily by how well system planners (generators, utilities, regulators) anticipate future loads, not by how large those loads will be. In other words, planners in most areas of the country generally do not attempt to provide enough generating capacity to satisfy peak loads as the marginal cost for satisfying peak loads is generally cheaper using means other than the construction of large generating facilities (e.g., the use of relatively small "peaker" plants or the purchase of supply from outside the planning region). DOE knows of no analysis which has found a correlation between system load factor and system reliability over the long term. Nor is DOE aware of any analysis that found a correlation between the long term rate of growth of electricity demand and system reliability.

Higher efficiency standards for central air conditioners and heat pumps are expected to reduce significantly the peak loads of electric systems in the future, thus enabling a reduction in the number of new power plants and transmission lines required to meet future demand. Electric system planners will take these efficiency improvements and other factors affecting future electricity demand into account when estimating how many new plants and transmission lines will be required to meet future demand, while maintaining or improving system reliability. Long term system reliability will be determined by how accurately system planners anticipate electricity demand and whether they take steps to ensure the addition of sufficient electricity generating, transmission and distribution capacity to meet this expected demand, while maintaining adequate reserve margins. For example, EIA's Annual Energy Outlook 2001 forecast that the cumulative requirements for additional electricity generating capacity by 2020 might range from roughly 350 gigawatts, assuming a low rate of economic growth, to nearly 500 gigawatts, assuming a comparatively high rate of economic growth. This compares to a difference of approximately 4 gigawatts between the estimated effects on capacity requirements of a SEER 12 standard and those of a SEER 13 standard. The range of estimated requirements for additional electricity generating capacity that result from varying assumptions about the rate of change in end-use technology

(in all sectors) and the rate of economic growth is even greater.

H. Other Issues

1. Minimum EER Requirement

Several comments were in support of a minimum EER requirement to ensure more efficient operation at high outdoor temperatures during periods when electricity use by air conditioners is at its peak. (ACEEE, No. 284 at p. 3; Austin Energy, No. 243 at p. 1; PG&E, No. 274 at p. 1). NARUC passed a resolution in July, 2000, urging DOE to raise the standard by 30 percent (*i.e.*, to 13 SEER) with a minimum peak efficiency performance requirement. (NARUC, No. 260 at p. 2). NEEP also supports a standard of at least 13 SEER with a corresponding minimum EER of 11.6. (NEEP, No. 273 at p. 2). NRDC believes that DOE cannot set a standard at the highest level that is technologically feasible and economically justified if it does not include in that standard a minimum EER requirement. NRDC adds that this recommendation does not mean that EER would drop as SEER increases; it simply reflects NRDC's concern that EER might not rise as quickly without a separate regulation than it would with one. (NRDC, No. 250 at p. 32).

York and Southern Company are both opposed to a minimum EER requirement. York asserts that an EER standard could be counter-productive by discouraging variable speed and modulating equipment, which could save consumers substantial amounts of money over the cooling season. (York, No. 270 at p. 4). Southern Company believes that, regardless of cost-effectiveness, DOE does not possess regulatory authority to specify performance measures necessary to insure cost savings to consumers (SEER) and peak demand benefits to electricity suppliers (EER). (Southern Company, No. 257 at p. 4).

As stated in the January 22 final rule, DOE is still convinced that the stringent physical relationship between EER and SEER in equipment rated through the adopted standard of 12 SEER, which is comprised exclusively of non-modulating equipment, will remain intact for the foreseeable future. Thus, there is no strong need for a minimum EER requirement in addition to a minimum SEER standard. *See* January 22 final rule, 66 FR 7183.

With regard to the use of variable speed or modulating technologies, even if these technologies eventually predominate, and thereby reduce EERs in typical equipment, they would still reduce peak demand compared to

today's 10 SEER baseline equipment. Furthermore, because variable speed and modulating equipment mitigate the cyclic losses that are due to widespread oversizing, the aggregated peak demand of a group of modulating air conditioners with lower EERs will likely be lower than that of a similar group of non-modulating air conditioners with higher EERs at the same SEER level. Also, utilities have the opportunity with modulating equipment to offer customers the option to allow the utility to "lock" the equipment into low-capacity operation in return for a lower electricity price.

Although DOE is interested in reducing peak demand, the primary purpose of appliance efficiency standards is to save energy. An EER standard could be counterproductive by discouraging variable speed and modulation, which can save substantial amounts of energy over the cooling season while providing consumers with additional benefits not found in single speed and non-modulating equipment.

Finally, although DOE believes that EPCA permits adoption of an EER standard, for the foregoing reasons, we do not believe that the Act requires or suggests that we establish such a standard under the circumstances here. Given the adopted standard levels, a national EER standard is both unnecessary and undesirable. Most benefits accruing from an EER standard will likely accrue from the SEER standards alone, without the associated burdens on manufacturers and the disincentives to apply energy-saving modulating technologies. Therefore, we have not adopted an EER standard in this rule.

2. TXV Requirement

ACEEE and PG&E were both in support of a prescriptive requirement for adaptive expansion devices such as thermostatic expansion valves (TXV). (ACEEE, No. 284 at p. 3; PG&E, No. 274 at p. 1). NEEP was more expansive on the topic by stating that the evidence in the record supports a TXV requirement. NEEP claims that TXVs provide additional efficiency benefits, over and above the benefits captured in the SEER rating procedure. They assert that central air conditioners with TXVs suffer lower efficiency degradation when a unit is improperly installed. The result is that TXVs can provide 12 percent energy savings over and above the energy savings associated with increasing SEERs. (NEEP, No. 273 at pp. 2, 4).

York agrees with DOE's decision in the both the January 22 final rule and the July 25 SNOPR not to impose a TXV

requirement. York claims that imposing a TXV requirement in this rule would circumvent the test procedure. Also, it asserts that key data for evaluating the impacts of TXVs on system performance have not been thoroughly reviewed by all interested parties. (York, No. 270 at p. 4).

As stated in the January 22 final rule, a performance-based approach is also our preference and is certainly in the spirit of EPCA. *See* 66 FR 7183–7184. As such, the SEER test procedure, not a TXV requirement, appears to be the most appropriate vehicle for assuring that an equipment's efficiency rating is based on its performance characteristics. In fact, TXVs already receive credit in the test procedure because of their superior cyclic performance. DOE is not eager to circumvent the test procedure, particularly when the key data either are not available or have not been thoroughly reviewed by all interested parties. That said, DOE favors a SEER test procedure that fairly evaluates equipment performance under conditions that represent those encountered in the field. DOE prefers to encourage correct charging or proper airflow but recognizes that practical barriers exist. Although no immediate action will be taken to address field equipment performance in the test procedure currently under revision, attempts may be made in future test procedure revisions to evaluate whether the SEER test procedure can and should be amended to better reflect equipment performance under improper charge or airflow.

In sum, this rulemaking does not adopt a TXV requirement. Any alterations in the SEER test procedure further to encourage the use of TXVs may be undertaken in a separate rulemaking process after proposed revisions to the test procedure have been finalized. We also encourage parties interested in encouraging the broader application of TXVs to pursue other avenues. These include voluntary programs like Energy Star, tax incentives, and other State and local initiatives, which can all be tied to the presence of a device like a TXV. States also have the opportunity to apply to us for an exemption from preemption that would allow them to implement their own requirements based on their own unique circumstances.

3. State Exemption From DOE Standards

The Council of State Governments, Eastern Regional Conference (ERC) states that if DOE fails to implement a 13 SEER standard, then ERC member States will seek a waiver from the Federal standard and implement the

higher standard at the State level, as the States of California and Oregon are currently doing. ERC goes on to quote 42 U.S.C. 6297(d) "Waiver of Federal Preemption" where it states that "Any state * * * which provides for any energy conservation standard for any type of covered product for which there is a Federal energy conservation standard * * * may file a petition with the Secretary (of Energy) requesting that such State regulation become effective with respect to such covered product." (ERC, No. 241-JJ at p. 1).

DOE will promptly act upon any petition for waiver that may be submitted by a State pursuant to section 327(d) of EPCA (42 U.S.C. 6297(d)). Section 327(d) provides that DOE must prescribe a rule granting a waiver from Federal preemption if the State establishes by a preponderance of the evidence that a State regulation is needed to meet "unusual and compelling State or local energy or water interests," as that phrase is defined by the statute (42 U.S.C. 6297(d)(1)(B)). Section 327(d) further provides that DOE may not grant a waiver if interested persons establish by a preponderance of the evidence that the State regulation would significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis (42 U.S.C. 6297(d)(3)). Finally, section 327(d) establishes the timetable and procedure that must be followed for acting upon petitions for waiver from Federal preemption.

4. Effective Date

DOE received written and oral comments with regard to DOE's proposed effective date (*i.e.*, the date when the covered products must comply with the new standards for the proposed amended standards contained in the July 25 SNOPR). In written comments, NRDC notes that the proposed effective date in the July 25 SNOPR is approximately six months later than that in the January 22 final rule, and claims that any delay in the effective date of new standards would reduce their benefits. NRDC adds that section 325(d) of EPCA (42 U.S.C. 6295(d)) does not require DOE to provide a five-year lead time for compliance by manufacturers after publication of a final rule. (NRDC, No. 250 at p. 34). TNRC recommends that rather than making the proposed standards effective in 2006, DOE should accelerate the effective date of the standards from the year 2006 to 2004, thereby providing improved energy efficiency and resultant air quality benefits as soon as reasonably

practicable. (TNRC, No. 286 at p. 2). At the public hearing on the July 25 SNOPR, representatives of the California Energy Commission, PG&E, and Goodman also urged DOE to establish an earlier effective date if a 12 SEER standard was adopted. (Hearing Transcript, at pp. 142–144 and 164–165). In initial written comments, ARI stated a willingness to consent to the proposed 5-years-from-date-of-publication effective date for the proposed 12 SEER standard. (ARI, No. 259 at p. 36). In supplemental comments submitted after the close of the comment period, ARI responded to the comments that requested an earlier effective date by stating that ARI would accept a compliance date of January 23, 2006, the same effective date as provided in the January 22 final rule (ARI, No. 289). ARI stated that any agreement on its part to an earlier effective date should not be deemed as a precedent by DOE or concession by ARI with respect to future rulemaking proceedings.

Although section 325(d) of EPCA does not specifically state that initial amended standards become applicable to the manufacture of covered products after a certain number of years elapse following publication of a notice of final rulemaking, it provides a schedule of specific dates for the promulgation of a final rule and of specific dates on which an initial amended SEER and an initial amended HSPF established by a final rule would apply to the manufacture of new central air conditioners and new central air conditioning heat pumps. In the past, in circumstances where DOE was unable to publish a final rule by a deadline date established by a statute with scheduled compliance dates, DOE has had a practice of adjusting the statutorily scheduled date such a rule becomes enforceable to allow for the same amount of lead time as provided in the original statutory schedule. However, the application of this practice in any particular rulemaking is subject to public comment and to exceptions in special circumstances. *See, e.g.*, 61 FR 10622, 10625 (March 14, 1996) (final rule establishing the Alternative Fuel Vehicle Acquisition Program with a compliance schedule that varied from the statutory schedule established by the Energy Policy Act of 1992 and that was subject to case-by-case exceptions). In this rulemaking, all interested persons who have an interest in the date that the final rule becomes enforceable—including representatives of all of the manufacturers who would have to comply with that rule—agree that the full amount of time between

date of publication and the dates on which the rule applies in the statutory schedule is not needed for central air conditioner and central air conditioning heat pump manufacturers to come into compliance with a 12 SEER standard. Moreover, if, as a result of unforeseen circumstances, a particular manufacturer can show hardship, inequity, or unfair distributions of burdens, the standard would be subject to case-by-case exception pursuant to the authority of the DOE Office of Hearing and Appeals under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. On the basis of the foregoing, DOE has decided to fix January 23, 2006, as the date on which the amended standards set forth in today's final rule apply to the manufacture of central air conditioners and central air conditioning heat pumps.

5. Environmental Impacts

Several comments stated that there would be greater environmental benefits under a 13 SEER standard. (Goodman, No. 269 at p. 2; Austin Energy, No. 243 at p. 1; State of Connecticut, No. 279 at p. 2; State of Maine, No. 254 at pp. 1–2). The Attorneys General from the States of New York and Massachusetts asserted that DOE's assessment of environmental impact used the wrong "no action" scenario; in their view, the correct "no action" scenario or baseline for measuring impacts is the SEER 13 standard in the January 22 rule (Attorneys General of New York and Massachusetts, No. 277 at p. 11). In addition to the carbon and NO_x emissions, the Attorneys General state that coal-fired power plants are dominant sources of mercury and particulate pollution nationwide and that by ignoring these impacts of its SNOPR, DOE violated the National Environmental Policy Act (NEPA). (Attorneys General of New York and Massachusetts, No. 277 at pp. 14–15).

DOE disagrees with the comment that DOE failed to comply with NEPA in proposing 12 SEER standards in the July 25 SNOPR. As previously discussed, DOE does not believe the standards in the January 22 final rule constitute the baseline for assessing the impact of today's final rule because those standards never became effective. The correct baseline, and the one used for the "no action" alternative in the EA, are the currently effective NAECA standards.

DOE's environmental assessment (EA) examined the environmental impacts of all trial standard levels being considered. *See* Section VIII.A. of this

Supplementary Information. All of the alternatives considered in DOE's analysis were found to have beneficial environmental impacts compared to the "no action" alternative. Under the "no action" or base case alternative, the minimum efficiency requirements would remain at their current levels: a cooling efficiency of 10 SEER for split system air conditioners and heat pumps, a cooling efficiency of 9.7 SEER for single package system air conditioners and heat pumps, a heating efficiency of 6.8 HSPF for split system heat pumps, and a heating efficiency of 6.6 HSPF for single package system heat pumps. The primary focus of the EA is the effect of alternative efficiency standards on air resources resulting from decreased emissions from fossil-fueled electricity generation. For each of the trial standard levels, DOE used the NEMS-BRS model to calculate total power sector emissions of nitrogen oxide, sulfur dioxide, and carbon. As explained in Section VIII.A. of this Supplementary Information, on the basis of the EA, DOE determined that the environmental effects associated with the standard levels in today's final rule are not significant.

DOE has corrected an error that DOE discovered in the NEMS-BRS, the model used by DOE to estimate both peak power and power plant emission impacts due to appliance standards. As discussed earlier (see Peak Power), DOE conducted a comprehensive review of the end-use load shapes used by NEMS-BRS, not only for the residential sector and, specifically, the air-conditioning end-use, but for the commercial, industrial, and transportation sectors as well. Several problems were discovered with the load shapes and, as a result, an alternative set of sectoral end-use load shapes were assigned to NEMS-BRS. By implementing a new set of sectoral load shapes, NEMS-BRS estimates greater power plant emission impacts (in the form of reduced CO₂ and NO_x emissions) from increased central air conditioner and heat pump standards. With regard to NO_x emissions, the actual reductions that result from more stringent efficiency standards are likely to be less than the original DOE estimates because some provisions of the Clean Air Act (CAA) were not explicitly modeled in the version of NEMS-BRS used for this analysis (AEO2000). Some of these provisions have been incorporated in subsequent AEOs. In addition, EPA is expected to promulgate regulations during the analytic period in question that are likely to further constrain NO_x emissions and reduce the impact that efficiency standards would have on

NO_x and other environmental emissions. Appendix M of the TSD includes an updated set of power plant emission impacts. The changes resulting from this NEMS-BRS error correction do not affect DOE's finding of no significant impact.

6. Employment Impacts

With regard to the impact that amended central air conditioner and heat pump standards have on national employment, both ARI and Rheem are concerned that high efficiency standards can lead to job losses in the air-conditioning industry's manufacturing sector. Rheem states that fewer units will be sold due to the higher purchase prices associated with more efficient equipment. Fewer equipment sales will in turn reduce the need for personnel in manufacturing facilities and design groups. (Rheem, No. 248 at p. 3). ARI states that DOE's decision to issue 13 SEER standards in its January 22 final rule was in part based on the fact that unemployment was then at the lowest rate in 30 years. Because the current state of the national economy is certainly worse than when DOE issued its January 22 final rule, ARI claims that 13 SEER standards would have a much worse impact on the air-conditioning industry than initially forecasted by DOE. In any case, ARI points out that DOE's analysis demonstrates that 12 SEER standards would have approximately 50 percent fewer job losses compared to 13 SEER standards. ARI asserts that this difference in job losses is significant and demonstrates that the proposed 12 SEER standards are a much better choice. (ARI, No. 259 at pp. 11–12, 31–32).

OOE has a much different perspective on DOE's employment impact analysis. OOE states that it is purely speculative to claim that there is a distinguishable difference between the impacts that 12 SEER and 13 SEER standards have on the national economy. The accuracy of the macroeconomic model used by DOE to estimate employment impacts does not allow for such a distinction. (OOE, No. 275 at pp. 3–4).

As stated in the January 22 final rule, DOE estimated the impacts of the new standards on national labor demand using an input/output model of the U.S. economy. See 66 FR 7192. The model characterizes the interconnections between 35 economic sectors using data from the Bureau of Labor Statistics. For some years after the new standards go into effect, new consumer expenditure on air conditioners and heat pumps each year outpaces their annual energy savings. This activity redirects expenditures into the manufacturing

sector, which is less labor intensive than other sectors of the economy,¹⁹ producing a gain of jobs in the manufacturing sector that is less than the loss of jobs in other sectors of the economy. Also, a loss of jobs results in the utility sector due to its loss of revenues. As annual consumer energy savings begin to exceed annual new expenditures on air conditioners, eventually the new standards will produce a net gain in national employment.

The increases or decreases in the net demand for labor in the economy estimated by the input/output model due to air conditioner and heat pumps standards are likely to be very small relative to total national employment. The following reasons were given in the January 22 final rule for the conclusion that any modest changes in employment were in doubt (66 FR 7192):

- Unemployment is now at the lowest rate in 30 years. If unemployment remains very low during the period when the standards are put into effect, it is unlikely that the standards alone could result in any change in national employment levels;

- Neither the BLS data nor the input-output model used by DOE include the quality or wage level of the jobs. The losses or gains from any potential employment change may be offset if job quality and pay also change; and

- The net benefits or losses from potential employment changes are a result of the estimated net present value of benefits or losses likely to result from air conditioner and heat pump standards. It may not be appropriate to identify and consider separately any employment impacts beyond the calculation of net present value.

Although, as noted by ARI, unemployment is no longer as low as it was at the time the January 22 final rule was issued, the annual unemployment rate in 2001, (4.8 percent) is only slightly higher than the annual rates for 1998, 1999, and 2000 and still less than the annual rates for all other years in the 1990's.²⁰ Thus, after discounting the first factor cited above, and considering the other two legitimate concerns regarding the interpretation and use of the employment impacts analysis, DOE cannot conclude that the central air conditioner and heat pump standards issued in today's final rule are likely to

¹⁹ Bureau of Economic Analysis, Regional Multipliers: A user Handbook for the Regional Input-Output Modeling System (RIMS II).

²⁰ U.S. Department of Labor—Bureau of Labor Statistics (BLS), Labor Force Statistics from the Current Population Survey, BLS Web site <http://stats.bls.gov:80/cps/home.htm>.

result in appreciable job losses to the nation.

7. Space-Constrained Products

a. Through-the-Wall Products

All parties commenting on DOE's proposed standards for through-the-wall products supported the proposed standards—10.9 SEER and 7.1 HSPF for split system air conditioners and heat pumps and 10.6 SEER and 7.0 HSPF for single package air conditioners and heat pumps. (Austin Energy, No. 243 at p. 3; OOE, No. 275 at p. 4; Lennox, No. 272 at p. 3; ASE, No. 282 at p. 4; ACEEE, No. 284 at pp. 13–14).

Thus, DOE is adopting as minimum efficiency standards for the through-the-wall products the standards proposed in the July 25 SNOPR.

b. Small Duct, High Velocity Systems

DOE received information in the rulemaking that indicated that the special characteristics of small duct, high velocity (SDHV) air conditioner and heat pump systems make it unlikely such systems could meet the 12 SEER/7.4 HSPF standard established for conventional products. Spacepak, Unico, and ARI all support the creation of a separate product class for SDHV systems and the development of technologically feasible and economically justified standards for this product. Although all three comments are in agreement with regard to the establishment of a new product class for SDHV systems, Unico and ARI are in disagreement over how these systems should be tested. While ARI recommends that no special consideration be given for SDHV systems and, therefore, no changes be made to the test procedures for central air conditioners and heat pumps, Unico proposes three options for amending the test procedure to rate SDHV systems. The three options include: (1) A coil-only test with a higher allowable coil pressure drop and use of a default fan power; (2) coil and blower tested with a 1.2 inch minimum external static pressure; and (3) coil-only testing with existing coil pressure drop allowance and default fan power without mention of the blower. (Spacepak, No. 267 at p. 1; Unico, No. 251 at pp. 3–4; ARI, No. 259 at p. 35).

While DOE agrees with public comments stating that these systems should not be subject to the standards set for conventional products, DOE does not currently have an analytical basis for setting a new standard for SDHV systems. DOE is currently in the process of amending the test procedure for rating the performance of central air

conditioners and heat pumps and will take the above comments into consideration when determining the appropriate testing requirements for SDHV systems. DOE has started the research needed to propose amended standards for SDHV systems and it intends to initiate a rulemaking shortly for this product class.

8. Basis for HSPF Level

ARI stated in its comments that if a 12 SEER standard is adopted for central air conditioning heat pumps, the HSPF should be no higher than 7.3. ARI believes the HSPF should be based on an analysis of the SEER–HSPF relationships across equipment of varying capacity ratings. It faults DOE's analysis for relying on an analysis of only 3-ton equipment to determine the HSPF. (ARI, No. 259 at p. 4).

As DOE explained in the preamble to the January 22 final rule, DOE established the SEER–HSPF pairings in order to maintain the offset between the minimum SEER and the minimum HSPF in the current standards. Because heating energy is a large fraction of total heat pump energy consumption, DOE stated it would not relax the HSPF level in the absence of sound evidence regarding the burdens that would be mitigated (66 FR 7184). DOE continues to think an HSPF of 7.4 is the appropriate level for 12 SEER, and today adopts that level. DOE's decision is supported by data discussed in the TSD (Section 4.6.2.1) which shows that most models of equipment below 3-tons meet or exceed an HSPF of 7.4, and almost a third of models available below 20,000 BTU/hr meet or exceed an HSPF of 7.4.

9. Non-Regulatory Approaches

ARI, Carrier, and Mercatus Center contended that DOE did not adequately evaluate the national impacts of non-regulatory programs for improving the efficiency of central air conditioners and heat pumps. ARI claimed that by combining several non-regulatory alternatives, such as consumer tax credits, consumer rebates and low-income subsidies, the amount of energy saved could increase to 3.5 quads while the net present value would remain relatively unchanged. (ARI, No. 259 at pp. 15–16). Carrier points out that DOE overlooked the energy saving benefits due to the proper installation and maintenance of air-conditioning equipment. Carrier claims that the total energy savings from these actions far exceed those limited to increasing the SEER of the equipment. In stating the proposed 12 SEER standards represent an appropriate level for the entire nation, Carrier recognizes that there are

some regions of the country that could benefit from higher efficiency for unique climate or electrical supply reasons. In these instances, government agencies and utilities should provide incentives to encourage the use of higher efficiency equipment. (Carrier, No. 280 at p. 3). Mercatus Center states that DOE does not evaluate non-regulatory programs adequately because it assumes their effects rather than estimating them based on any credible data or evidence. (Mercatus Center, No. 242 at p. 13).

DOE disagrees with this comment. In determining the base case for the analysis of the highest efficiency standards that are technologically feasible and economically justified (i.e., the energy consumption likely to occur in the absence of amended standards), DOE gave adequate consideration to all non-regulatory market forces likely to occur in the absence of amended standards. Additionally, the Regulatory Impact Analysis estimated the national energy savings and net present value that would result from non-regulatory approaches including: (1) Consumer product labeling, (2) public education, (3) prescriptive standards, (4) consumer tax credits, (5) manufacturer tax credits, (6) consumer rebates, (7) low income subsidies, (8) voluntary efficiency targets, and (9) mass government purchases. The analysis found that none of them would save an equivalent amount of energy as energy conservation standards.

10. Energy Policy

On the issue of energy policy, several comments claimed that DOE's action of withdrawing the 13 SEER standards issued in the January 22 final rule is not consistent with the current Administration's own National Energy Policy. ASAP, ASE, CEC, and NRDC all note that the Administration calls for appliance standards as way to moderate growth in electricity demand and limit consumer energy bills. (ASAP, No. 244 at p. 1; ASE, No. 282 at p. 2; CEC, No. 263 at p. 2; NRDC, No. 250 at p. 28). NRDC also states that the relaxation of the 13 SEER standard is inconsistent with the obligations of the United States under the United Nations Framework Convention on Climate Change (UNFCCC), to which our country became a Party with the advice and consent of the Senate in 1992. (NRDC, No. 250 at pp. 29–30).

DOE disagrees that its action to finalize 12 SEER standards for central air conditioners and heat pumps is inconsistent with either the Administration's National Energy Policy or with the United States' obligations under the UNFCCC. The 12 SEER

standards being finalized today significantly increase the minimum efficiency requirements for central air conditioners and heat pumps. Thus, the policy to amend the standards is consistent with the Administration's call to use appliance standards as a method to moderate growth in electricity demand and limit consumer energy bills.

VII. Analytical Results and Conclusions

A. Overview of Analytical Results

1. General

Although DOE reassessed the benefits and burdens of the trial standard levels in arriving at the determinations in today's rule, the underlying analyses are unchanged from those presented in the January 22 final rule except for additional analysis of through-the-wall product classes included as Appendix L

to the TSD. Briefly, DOE examined five standard levels. Table 3 presents the trial standards levels analyzed and the corresponding efficiency level for each class of product. Trial Standard Level 5 is the Max Tech Level for each class of product. Trial Standard Level 4 was the one DOE adopted for the standards set forth in the January 22 final rule. Trial Standard Level 2 is the one DOE today determines to be the maximum efficiency that is technologically feasible and economically justified.

TABLE 3.—TRIAL STANDARDS LEVELS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS (SEER)

Trial standard level	Split air conditioners	Packaged air conditioners	Split heat pumps	Packaged heat pumps
1	11	11	11	11
2	12	12	12	12
3	12	12	13	13
4	13	13	13	13
5	18	18	18	18

For each trial standard examined, several different scenarios were analyzed consisting of variations on: (1) Electricity price and housing projections; (2) equipment efficiency distributions; (3) manufacturer cost estimates; and (4) societal discount rate. Electricity price and housing projections were based on three different forecasts from the Energy Information Agency's 2000 Annual Energy Outlook (AEO): (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case. DOE analyzed three efficiency scenarios, each of which assumed a different efficiency distribution after new standards would take effect: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. See October 5, 2000 NOPR for an explanation of the three scenarios (65 FR 59596, notes 10 through 12 and accompanying text). Under the standard levels in today's rule, DOE believes that the NAECA scenario most closely represents the likeliest impact of the new standards, as explained in Chapter 8 of the TSD. DOE analyzed two manufacturer cost scenarios: (1) Based on reverse engineering estimates, and (2) based on ARI-provided mean cost estimates. For the reasons given in the preamble to the January 22 final rule (66 FR 7177–78), DOE expects manufacturer costs under the amended standards will lie closer to the estimates produced through DOE's reverse engineering analysis, which lie between ARI's minimum and ARI's mean cost values. DOE assumed a societal discount rate of 7 percent for calculating net present value (NPV). However, a 3 percent value was investigated as an alternative scenario in accordance with the Office

of Management and Budget's (OMB) *Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements*.

2. Through-the-Wall Products

In response to comments on the October 5, 2000 NOPR, DOE conducted additional analysis on the cost and technical issues related to through-the-wall air conditioner and heat pump products. The analysis is described in detail in Appendix L of the TSD and is summarized here.

DOE performed a design assessment on two split through-the-wall systems and one packaged through-the-wall system. All systems are designed primarily for the replacement market and fit the physical definition of through-the-wall equipment proposed in the October 5, 2000 NOPR and July 25 SNOPR. The design assessment sought to identify the cost and efficiency impacts of employing commonly applied techniques to improve efficiency including reduction of air leakage and improvement in airflow, utilizing more efficient compression and fan motors, and increasing heat exchanger surface area. Emerging technologies and modulating technologies were not considered since they are not likely to be applied in conventional baseline equipment.

The cost estimation for the analysis was based on a modified version of the reverse engineering cost models developed as part of this rulemaking for conventional products. The performance impacts of employing various design options were estimated utilizing a spreadsheet model populated

with actual performance data and engineering guidelines.

The analysis concluded that utilizing commonly applied technologies and designs, the most constrained through-the-wall split-system analysis could increase its SEER rating from 10.0 SEER to as high as 11.4 SEER, and the packaged system analysis could increase its SEER rating from 9.7 SEER to 10.6 SEER. Employing all improvements would add \$106 and \$129 to the retail price of the equipment, respectively, comparable to the increases expected in conventional equipment moving to a 12 SEER standard.

To explore the effects that more stringent standards for through-the-wall products would have on consumers, DOE performed a life-cycle cost analysis. The life-cycle cost analysis for through-the-wall consumers used a subset of consumers identified as living in multi-family dwellings, which are the predominate application for through-the-wall products.

In the July 25 SNOPR, DOE proposed, based on its analysis, a 10.9 SEER/7.1 HSPF standard for through-the-wall split systems and a 10.6 SEER/7.0 HSPF standard for through-the-wall single package system products. After considering public comments, all of which supported the proposed levels, DOE today adopts those levels as final standards for through-the-wall products.

3. Small Duct, High Velocity Systems

In response to comments on the July 25, 2001 SNOPR, DOE has determined that additional analysis on the cost and technical issues related to SDHV air conditioner and heat pump products are

needed to determine appropriate minimum efficiency standards for this class of product. The analysis plan for establishing the manufacturing cost and efficiency relationship for SDHV systems has yet to be developed, but DOE intends to involve the manufacturers that produce these products (Spacepak and Unico) in the planning process.

To explore the effects that more stringent standards for SDHV systems have on consumers, DOE intends to perform a life-cycle cost analysis. The life-cycle cost analysis for SDHV consumers will use a subset of consumers identified as probable candidates for the application of SDHV products.

Although DOE has concluded that SDHV systems warrant their own product class, it has yet to determine an appropriate minimum efficiency standard for them. Therefore, this final rule provides that the NAECA-prescribed minimum efficiency

standards covering all product types (e.g., 10 SEER/6.8 HSPF for split system air conditioners) will remain applicable to SDHV systems. DOE intends to conduct a separate rulemaking for SDHV systems to establish appropriate minimum efficiency standards for this class of product.

B. Conclusions Regarding Conventional Products

EPCA specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)). In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens (42 U.S.C. 6295(o)(2)(B)(i)). The amended standard must "result in

significant conservation of energy" (42 U.S.C. 6295(o)(3)(B)).

In conducting its analysis, DOE considers the impacts of standards beginning with the Max Tech Level, *i.e.*, Trial Standard Level 5 in this rulemaking. DOE then considers less efficient levels until it reaches the level which is both technologically feasible and economically justified.

To aid the reader in the discussion of the benefits and burdens of the trial standard levels, DOE includes a summary of the analysis results for all of the levels in Table 4.²¹ Table 4 presents a summary of quantitative analysis results for each trial standard level based on the assumptions DOE considers most plausible. These include manufacturing cost estimates from the reverse engineering, an 18.4-year equipment lifetime with one compressor replacement at 14 years, and electricity prices based on the AEO2000 Reference Case.

TABLE 4.—SUMMARY OF QUANTITATIVE RESULTS¹

	Trial Std 1	Trial Std 2	Trial Std 3	Trial Std 4	Trial Std 5
SEER levels for most products	11	12	12 for CAC/ 13 for HP.	13	18
Primary Energy Saved (quads)	1.7	3.0	3.5	4.2	8.8
Generation Capacity Offset (GW)	4.4	8.7	10.1	12.6	21.9
NPV (\$billion)					
7% Discount Rate	2	2	1	1	(10)
Industry Impacts (million \$)²					
Cumulative Change in Industry NPV	(30)	(159)	(171)	(303)	—
Differential impact between Industry Sub-groups ³	75	238	261	429	—
Cumulative Regulatory Burden on Industry	(>509) ..	(>638) ..	(>650) ..	(>782) ..	—
Minimum net cash flow	62	31	18	(3)	—
Life-Cycle Cost Savings (\$) ⁴					
Split AC	75	113	113	113	(137)
Packaged AC	78	163	163	29	(276)
Split HP	209	365	372	372	(41)
Packaged HP	207	421	353	353	166
Equipment Price Increase (\$)					
Split AC	91	213	213	335	754
Packaged AC	89	158	158	425	859
Split HP	55	144	332	332	1039
Packaged Heat Pump	92	149	435	435	985
Fraction of all Consumers with Net LCC Losses >2% (%)					
Split AC	2	25	25	39	68
Packaged AC	1	9	9	52	73
Split HP	0	0	6	6	57

²¹ All cumulative effects that are not monetary are not discounted. Monetary effects are discounted to 1998 dollars.

TABLE 4.—SUMMARY OF QUANTITATIVE RESULTS¹—Continued

	Trial Std 1	Trial Std 2	Trial Std 3	Trial Std 4	Trial Std 5
Packaged Heat Pump	0	0	12	12	48
Fraction of Low Income Consumers with Net LCC Losses >2% (%)					
Split AC	5	34	34	50	77
Packaged AC	2	14	14	61	80
Split HP	0	0	12	12	75
Packaged Heat Pump	0	0	20	20	66

¹ Parentheses indicate negative (–) values. Unless otherwise noted, Trial Standard Levels 1–3 refer to the NAECA efficiency scenario, and Trial Standard Levels 4 and 5 refer to the Roll-up efficiency scenario.

² Not calculated at Trial Standard Level 5.

³ The benefit accruing to the Higher Operating Cost subgroup compared to the Lower Operating Cost subgroup.

⁴ Negative values indicate LCC increases.

In addition to the quantitative results, DOE also considers other burdens and benefits that might affect the economic justification.

The potential to improve the reliability of the electricity system is considered by some to be the major benefit that DOE had not quantified explicitly. In areas where the occurrence of blackouts (and brownouts) can be reduced through expansion of system capacity, the economic value of avoided blackouts associated with reductions in peak load cannot exceed the value of the avoided capacity expansion. That value is already captured in DOE's analysis as savings in consumer utility bills. However, in areas that are unable to maintain adequate capacity reserves, the value of avoided blackouts associated with reductions in peak demand often far exceed the normal costs of capacity expansion.²² DOE has reexamined claims that the energy efficiency standards under consideration could improve significantly electric system reliability over the long term (see discussion at Section VI.G.2).

DOE also recognizes that the adopted standards could result in additional unquantifiable benefits and burdens. These include the avoidance of environmental impacts associated with the siting of some powerplants, a possible increase in health problems caused by consumers foregoing air conditioner purchases, a possible reduction in the ability of the product to dehumidify, a possible lessening of competition, and possible difficulty in

installing the new baseline products into replacement applications.

First DOE considered Trial Standard Level 5, the Max Tech Level for each of four classes of products, representing uniform 18 SEER requirements. The manufacturing cost DOE assumes for Trial Standard Level 5 is equal to the cost of 15 SEER equipment, rather than the cost of 18 SEER equipment, since manufacturer cost data were not available for the 18 SEER efficiency levels. Because of that assumption, DOE expects that its estimate of the cost and price of the product at Trial Standard Level 5 are understated. Trial Standard Level 5 would likely save 8.8 quads of energy between 2006 and 2030 which DOE considers significant. The energy savings through 2020 would result in the avoidance of approximately 22 gigawatts (GW) of installed generation capacity in 2020. For comparison, the generating capacity is equivalent to roughly 55 large, 400 megawatt, power plants, and reduced emissions would range up to 73 Mt of carbon equivalent and up to 279 kt of NO_x.²³ Furthermore, for the nation as a whole, Trial Standard Level 5 is estimated to result in a net cost in excess of \$10 billion. DOE did not calculate manufacturer impacts at this trial standard level, determining based on preliminary evaluation that they would be severe and unacceptable.

At Trial Standard Level 5, the average consumer would experience an increase in life-cycle cost. Compared to today's standards, purchasers of split central air-conditioners, the predominate class of central air conditioner with 65 percent of the sales of central air conditioners and heat pumps, would most likely lose in excess of \$137 over the life of the appliance. Purchasers of split heat pumps, the predominant class of heat pump, would most likely lose in excess of \$41. These life-cycle cost

estimates represent lower bounds to the actual costs because they do not include the additional price the consumer would pay over the price of a 15 SEER product, which would increase the life-cycle cost considerably.

DOE concludes that at Trial Standard Level 5, the benefits of energy and energy cost savings, and emission reductions would be outweighed by the negative economic impacts to the nation, to the vast majority of consumers and to the manufacturers. Consequently, DOE has determined that Trial Standard Level 5, the Max Tech Level, is not economically justified.

Next, DOE considered Trial Standard Level 4, the level that the previous Administration determined to be economically justified in the January 22 final rule. This level specifies 13 SEER equipment for all product classes. In considering Trial Standard Level 4, DOE assumed the Roll-up efficiency scenario and reverse engineering cost estimates to be the most probable. Under the Roll-up scenario, equipment that in the base case was forecast to be less efficient than the trial standard level is assumed to move up to the standard level, and equipment forecasted to be at or above the trial standard level is assumed not to increase in efficiency. (See Section 8.4.8 of the TSD for the reasons DOE considers the Roll-up efficiency scenario most probable above Trial Standard Level 3 and the NAECA efficiency scenario most probable at Trial Standard Levels 1, 2, and 3; see Section 7.2.2.5 of the TSD for the current efficiency distribution for each product class and for the assumed efficiency distributions after new standards.)

Primary energy savings between 2006 and 2030 is estimated to be 4.2 quads, which DOE considers significant. The estimated energy savings through 2020 would result in avoidance of approximately 12.6 GW in installed

²² For instance, if capacity-related blackouts cost a region \$1 billion, society would be willing to pay up to \$1 billion to prevent them. If those blackouts can be prevented through either a capacity expansion or a reduction in peak demand, and the new capacity would cost \$100 million, the value of the reduction in peak demand can be no more than \$100 million. If the region is short on capacity and cannot add new capacity quickly, however, the same reduction in peak demand then can equal the value of the avoided blackout (\$1 billion) since there is no feasible alternative.

²³ Generating capacity, carbon, and NO_x reductions are based on Roll-up efficiency scenario.

generating capacity in 2020. For comparison, the generating capacity is equivalent to avoiding the need for 32 large 400 megawatt power plants, and reduced emissions would range up to 33 Mt of carbon equivalent and up to 111 kt of NO_x.²⁴ Trial Standard Level 4 would lower peak electricity demand compared to the base case. That would allow utility service areas to build less new capacity, with attendant environmental benefits.

A measure of an efficiency standard's economic benefit to the nation is the increase in net present value, which is the difference in total cost, both initial cost and discounted operating cost, between the base case (without a new standard) and the case with a new standard. For Trial Standard Level 4, the increase in national net present value is estimated to be \$1 billion.²⁵

Since DOE expects the Roll-up efficiency scenario to result from standards adopted at Trial Standard Level 4, the burdens of Trial Standard Level 4 on manufacturers are likely to be severe. Not only does DOE expect the average loss in industry NPV to be around 20 percent, but impacts on most manufacturers would reach almost 30 percent. Their long term drop in return on investment and short term drop in cash flow suggest that standards adopted at Trial Standard Level 4 could accelerate the consolidation trend, possibly resulting in fewer choices for consumers and in a slowing of the pace of innovation well into the future. Furthermore, the cumulative impact on the industry of all new Federal and State regulations is estimated to exceed \$782 million.

For Trial Standard level 4, the average purchaser of a split system air conditioner, the predominant class with 65 percent of all shipments, would see the installed price of \$2236 rise to \$2571, an increase of \$335. Lower utility bills from the energy savings would repay this increase in 11.3 years and produce a total saving with a net present value of \$113 over the 18.4 year life of the product. The average purchaser of a single package air conditioner, which represents 10 percent of all shipments, would see the average installed price of \$2607 rise to \$3032, an increase of \$425. Lower utility bills from the energy savings would repay this increase in 14.5 years and produce a total saving with a net

present value of \$29 over the 18.4 year life of the product.

The average purchaser of a split system heat pump, which represents 22 percent of all shipments, would see the average installed price of \$3668 rise to \$4000, an increase of \$332. Lower utility bills from the energy savings would repay this increase in 6.4 years and produce a total saving with a net present value of \$372 over the 18.4 year life of the product. The average purchaser of a single package heat pump, which represents 4 percent of all shipments, would see the average installed price of \$3599 rise to \$4034, an increase of \$435. Lower utility bills from the energy savings would repay this increase in 8.4 years and produce a total saving with a net present value of \$353 over the 18.4 year life of the product. While the average consumer purchasing a 13 SEER air conditioner or heat pump would experience a net saving over the lifetime of the product, a substantial fraction of all households would experience net costs exceeding 2 percent of the total life-cycle cost of today's baseline units. Thirty-nine percent of the households with split system air conditioners, 52 percent with single package air conditioners, 6 percent with split system heat pumps and 12 percent with single package heat pumps would experience a net cost. The percentage of low-income consumers who would experience net costs exceeding 2 percent of the total life-cycle cost of today's baseline units is greater than that of the average household; 50 percent of low-income households with split system air conditioners, 61 percent with single package air conditioners, 12 percent with split system heat pumps and 20 percent with single package heat pumps. Also, the possibility that many consumers would incur substantial installation costs is great because 13 SEER equipment often will not fit in the same space as current 10 SEER equipment. In light of the higher purchase cost increase experienced by all consumers and the percentage of households that experience life-cycle cost increases, in particular low-income households, which experience life-cycle cost increases, consumer burdens are particularly acute under Trial Standard Level 4.

DOE concludes that at Trial Standard Level 4, the benefits of energy savings, generating capacity and emission avoidance, and net benefit to the nation's consumers would be outweighed by the maldistribution of consumer benefits, the potential increase in installation costs for some consumers related to installing

potentially larger equipment, and the cost to manufacturers taking into account the cumulative regulatory burden. Trial Standard Level 4 introduces the serious concern that prospective owners of air conditioning heat pump systems would instead purchase less costly air conditioner resistance heater combinations because of the substantial purchase price differential between heat pumps and air conditioners. As discussed in the January 22 notice of final rulemaking (66 FR 7196), the energy savings from the more efficient heat pumps would be eliminated if only a small fraction of heat pump owners (4 percent) switched to resistance heating. Those households residing in manufactured housing, which is often shipped from the factory without an air conditioning system but with a resistance furnace, might be inclined to simply add a lower cost air conditioner and retain the resistance furnace instead of replacing the resistance furnace with a heat pump. In short, the large financial burdens of Trial Standard Level 4 are not outweighed by the expected financial benefits. Other potential burdens include possible health effects caused indirectly by foregone air conditioning purchases and possible lessening of competition, as determined by DOJ in its letter of April 5, 2001 to DOE regarding the January 2001 final rule. Consequently, DOE determines that Trial Standard Level 4 is not economically justified.

Next, DOE considered Trial Standard Level 3. This level specifies 12 SEER equipment for air conditioners and 13 SEER equipment for heat pumps. In considering Trial Standard Level 3, DOE assumed the NAECA efficiency scenario and reverse engineering cost estimates to be the most probable. (See Section 8.4.8 of the TSD for the reasons DOE considers the Roll-up efficiency scenario most probable at Trial Standard Levels 4 and 5 and the NAECA efficiency scenario most probable at Trial Standard Levels 1, 2 and 3.)

For Trial Standard Level 3, primary energy savings between 2006 and 2030 are estimated to be 3.5 quads, which DOE considers significant. The energy savings through 2020 would result in avoidance of approximately 10.1 GW in installed generating capacity in 2020. For comparison, the generating capacity is equivalent to avoiding the need for 25 large 400 megawatt power plants, and reduced emissions would range up to 28 Mt of carbon equivalent and up to 97 kt of NO_x.²⁶ Trial Standard Level 3 would

²⁴ Generating capacity, carbon, and NO_x reductions are based on Roll-up efficiency scenario.

²⁵ Under the NAECA efficiency scenario, the increase in national net present value would be zero.

²⁶ Generating capacity, carbon, and NO_x reductions are based on NAECA efficiency scenario.

lower peak electricity demand compared to the base case. That would allow utility service areas to build less new capacity, with attendant environmental benefits.

For Trial Standard Level 3, the increase in national net present value is estimated to be \$1 billion.²⁷ Since DOE expects the NAECA efficiency scenario to result from standards adopted at Trial Standard Level 3, the burdens of Trial Standard Level 3 on manufacturers are likely to be less severe than at Trial Standard Level 4. DOE expects the average loss in industry NPV to be around 11 percent, but impacts on most manufacturers would be around 17 percent. Their long term drop in return on investment and short term drop in cash flow suggest that standards adopted at Trial Standard Level 3 could accelerate the consolidation trend, possibly resulting in fewer choices for consumers and in a slowing of the pace of innovation well into the future. Furthermore, the cumulative impact of all new Federal and State regulations would exceed \$650 million.

At Trial Standard Level 3, the average purchaser of a split system air conditioner, the predominant class with 65 percent of all shipments, would see the installed price of \$2236 rise to \$2449, an increase of \$213. Lower utility bills from the energy savings would repay this increase in 9.8 years and produce a total saving with a net present value of \$113 over the 18.4 year life of the product. The average purchaser of a single package air conditioner, which represents 10 percent of all shipments, would see the average installed price of \$2607 rise to \$2765, an increase of \$158. Lower utility bills from the energy savings would repay this increase in 7.5 years and produce a total saving with a net present value of \$163 over the 18.4 year life of the product.

The average purchaser of a split system heat pump, which represents 22 percent of all shipments, would see the average installed price of \$3668 rise to \$4000, an increase of \$332. Lower utility bills from the energy savings would repay this increase in 6.4 years and produce a total saving with a net present value of \$372 over the 18.4 year life of the product. The average purchaser of a single package heat pump, which represents 4 percent of all shipments, would see the average installed price of \$3599 rise to \$4034, an increase of \$435. Lower utility bills from the energy savings would repay

this increase in 8.4 years and produce a total saving with a net present value of \$353 over the 18.4 year life of the product.

Like Trial Standard Level 4, Trial Standard Level 3 raises the serious concern that prospective owners of air conditioning heat pump systems would purchase less costly air conditioner resistance heater combinations. In this case there is a potential loss of energy savings because of the lower standards for air conditioners compared to heat pumps, which could eliminate all energy savings from the more efficient heat pumps if only a small fraction of heat pump owners (4 percent) switched to resistance heating. Trial Standard Level 3 poses a serious concern regarding potential anti-competitive effects because the size and cost of the higher efficiency heat pumps could reduce competition between manufacturers of heat pumps and manufacturers of resistance heating and other lower cost heating systems.

DOE concludes that, at Trial Standard Level 3, the benefits of energy savings, generating capacity and emission avoidance, and net benefit to the nation's consumers would be outweighed by the maldistribution of consumer benefits and manufacturer costs, the likelihood of higher installation costs resulting from potentially larger equipment, and the net impact on the industry in light of the cumulative regulatory burden. The most serious concern is the possibility of equipment switching that would likely substantially reduce the calculated energy savings, drastically reducing the potential benefits. Other possible burdens include lessening of competition, as determined by DOJ in its April 5, 2001 letter to DOE regarding the January 2001 final rule, and adverse health effects caused by forgone air conditioner purchases. Consequently, DOE determines that Trial Standard Level 3 is not economically justified.

Next, DOE considered Trial Standard Level 2. This level specifies 12 SEER equipment for all product classes, and this is the level that DOE has determined is the maximum efficiency level that is economically justified. In considering Trial Standard Level 2, DOE assumed the NAECA efficiency scenario and reverse engineering cost estimates to be the most probable. Primary energy savings between 2006 and 2030 is estimated to be 3 quads, which DOE considers significant. The energy savings through 2020 would result in avoidance of approximately 8.7 GW in installed generating capacity in 2020. For comparison, the generating capacity is equivalent to avoiding the need for 22

large 400 megawatt power plants, and reduced emissions would range up to 24 Mt of carbon equivalent and up to 83 kt of NO_x.²⁸ Trial Standard Level 2 would lower peak electricity demand compared to the base case. That would allow utility service areas to either avoid build less new capacity, with attendant environmental benefits. For Trial Standard level 2, the increase in national net present value is estimated to be \$2 billion, which represents the highest level for all the standard levels considered.²⁹

Since DOE expects the NAECA efficiency scenario to result from standards adopted at Trial Standard Level 2, the burdens of Trial Standard Level 2 on manufacturers are likely to be moderate. DOE expects the average loss in industry NPV to be around 10 percent, with impacts on most manufacturers around 16 percent. Their long term drop in return on investment and short term drop in cash flow are moderate, suggesting that standards adopted at Trial Standard Level 2 would not accelerate the consolidation trend, and could result in more choices for consumers and raise the pace of innovation. Furthermore, the cumulative impact of all new Federal and State regulations is estimated to exceed \$638 million.

For Trial Standard Level 2, the average purchaser of a split system air conditioner, the predominant class with 65 percent of all shipments, would see the installed price of \$2236 rise to \$2449, an increase of \$213. Lower utility bills from the energy savings would repay this increase in 9.8 years and produce a total saving with a net present value of \$113 over the 18.4 year life of the product. The average purchaser of a single package air conditioner, which represents 10 percent of all shipments, would see the average installed price of \$2607 rise to \$2765, an increase of \$158. Lower utility bills from the energy savings would repay this increase in 7.5 years and produce a total saving with a net present value of \$163 over the 18.4 year life of the product.

The average purchaser of a split system heat pump, which represents 22 percent of all shipments, would see the average installed price of \$3668 rise to \$3812, an increase of \$144. Lower utility bills from the energy savings would repay this increase in 3.9 years and produce a total saving with a net

²⁸ Generating capacity, carbon, and NO_x reductions are based on NAECA efficiency scenario.

²⁹ Under the Roll-up efficiency scenario, the increase in national net present value would be \$3 billion.

²⁷ Under the Roll-up efficiency scenario, the increase in national net present value would be \$2 billion.

present value of \$365 over the 18.4 year life of the product. The average purchaser of a single package heat pump, which represents 4 percent of all shipments, would see the average installed price of \$3599 rise to \$3748, an increase of \$149. Lower utility bills from the energy savings would repay this increase in 4 years and produce a total saving with a net present value of \$421 over the 18.4 year life of the product.

While the average consumer purchasing a 12 SEER air conditioner or heat pump would experience a net saving over the lifetime of the product, some households would experience net costs exceeding 2 percent of the total life-cycle cost of today's baseline units. Thus, 25 percent of the households with split system air conditioners and 9 percent with single package air conditioners would experience a net cost. No households with heat pumps would experience a net cost. The percentage of low-income consumers who would experience net costs exceeding 2 percent of the total life-cycle cost of today's baseline units is greater than that for an average household. Thus, 34 percent of low-income households with split system air conditioners and 14 percent with single package air conditioners would experience a net cost. No low-income households with heat pumps would experience a net cost. Also, the possibility that consumers would incur substantial installation costs is less than that with a 13 SEER standard because 12 SEER equipment is more likely to fit in the same space as current 10 SEER equipment. In light of the moderate purchase cost increase experienced by all consumers, the percentage of households, in particular low-income households, which experience life-cycle cost increases, consumer burdens are substantially less severe under Trial Standard Level 2 than Trial Standard Level 4.

After carefully reconsidering the analyses and comments, and giving appropriate weight to consumer impacts and cumulative regulatory burden in the assessment of the benefits and burdens, DOE today amends the energy conservation standards for central air conditioners and central air conditioning heat pumps at Trial Standard Level 2. DOE concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, DOE concludes that the benefits of energy savings, the projected amount of avoided power plant capacity, consumer life-cycle cost savings, national net

present value increase, and emission reductions resulting from the standards outweigh the burdens. The burdens include the loss of manufacturer net present value, taking into account the cumulative regulatory burden and annual cash flow, increases in life-cycle cost for some users of products covered by today's rule, any possible increase in health problems caused by consumers foregoing air conditioner purchases, any possible reduction in the ability of the product to dehumidify, any possible effect on competition (addressed by DOJ in its October 19, 2001 letter to DOE), and any possible difficulty in installing the new baseline products into replacement applications.

C. Conclusions Regarding Space-Constrained Products

If a 12 SEER minimum requirement for air conditioners and heat pumps is implemented, DOE's analysis shows that of all potential space-constrained products, only those with through-the-wall condensers and small duct, high velocity systems need special consideration.

1. Through-the-Wall Products

The TSD contains a new Appendix L describing the results of our recent re-evaluation of those products. They demonstrate that split through-the-wall equipment can attain 10.9 SEER using designs and technologies that are commonly applied or available, with price impacts similar to those that conventional equipment would experience in meeting the proposed 12 SEER standard. The packaged equipment analyzed was demonstrated to be capable of attaining only a 10.6 SEER rating, although comments received indicate that one manufacturer of packaged through-the-wall equipment, Armstrong, expects their equipment to be capable of attaining 11 SEER.

Based on this evaluation, DOE adopts new product classes for products that have through-the-wall condensers and are intended for replacement applications. The new classes are required to meet minimum efficiencies lower than those of the other classes: 10.9 SEER and 7.1 HSPF for through-the-wall air conditioner and heat pump split-systems, and 10.6 SEER and 7.0 HSPF for through-the-wall air conditioner single-package systems. DOE's analysis suggests those products can attain these levels without substantial redesign or price increases that would result in a loss of market share to conventional products. Also, the life-cycle cost analysis confirms that, on average, consumers of split

through-the-wall equipment would not incur an increase in life-cycle cost, and that consumers of packaged through-the-wall equipment would incur an increase of \$52 over the life of the equipment. In no case would any consumer of split through-the-wall products be expected to incur life-cycle costs greater than 2 percent of the total life-cycle cost, and only 17 percent of consumers of packaged through-the-wall equipment would be expected to incur cost increases greater than 2 percent of the total life-cycle cost.

DOE concludes that standard levels higher than 10.9 SEER (split through-the-wall) and 10.6 SEER (packaged through-the-wall) are technologically feasible, but are not economically justified. DOE's analysis on three through-the-wall models suggests that those products could attain efficiencies as high as 11.4 SEER, but the results are not conclusive and cannot be confidently applied to all through-the-wall products. DOE's analysis does not provide enough evidence to convince us that levels higher than 10.9 SEER (10.6 SEER for packaged through-the-wall) will be technologically feasible during the five year period during which manufacturers would prepare to meet the new requirements. DOE's analysis does indicate that opportunities for efficiency improvement do exist, and that manufacturers of those products should continue to investigate those opportunities.

A serious concern that DOE has considered is that the lower through-the-wall standards might encourage purchasers of conventional equipment to shift to through-the-wall products, undermining the benefits of the 12 SEER standard for conventional products. DOE is therefore limiting the new through-the-wall classes to products manufactured before January 23, 2010. See definition of "through-the-wall air conditioner and heat pump." Thus, these classes will exist only for a period of four years following the compliance date established for the new standards for conventional products. During that time, the availability of suitable high-efficiency components will likely increase and the manufacturers of through-the-wall products will be able to investigate options for meeting the more stringent 12 SEER level. Both will make it easier for through-the-wall products to attain the 12 SEER minimum efficiency required of other products, thereby making 12 SEER a technologically feasible and economically justified level. The sunset provision will help to ensure that other manufacturers will not make the investment required to market through-

the-wall products heavily for conventional applications during the four year period. It will also limit the time during which lower efficiency through-the-wall equipment is installed, ensuring that additional energy savings associated with the 12 SEER level are realized in a certain time period.

To further limit the application of the through-the-wall class, products in these classes may not exceed 30,000 BTU/hr in cooling capacity, may not contain special weatherization features that would allow them to be installed totally outdoors, and must be marked for installation only through an exterior wall. DOE also limits the size of the area used for condenser air exchange in order to limit these classes to those products intended primarily for replacement applications.

2. Small Duct, High Velocity Systems

In today's final rule, DOE establishes a separate product class for SDHV systems and retains the NAECA standards for these products pending further study to establish appropriate higher standard levels. DOE intends to publish a final rule for the test procedure in the near future. Any future work to establish appropriate minimum efficiency standards for SDHV systems will be based on the testing requirements developed for SDHV systems in the test procedure revision currently being finalized, or in a future revision specifically aimed at SDHV products.

VIII. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act

DOE prepared an Environmental Assessment (EA) (DOE/EA-1352) available from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-41, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-0854. DOE found the environmental effects associated with various standard efficiency levels for central air conditioners and heat pumps, including 12 SEER, to be not significant. Therefore DOE is publishing, elsewhere in this issue of the **Federal Register** a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508), and DOE's regulations for compliance with NEPA (10 CFR Part 1021).

As previously discussed (Section VI.G.1, "Peak Power"), the model used by DOE to estimate both peak power and power plant emission impacts due to appliance standards was updated to include a more representative set of end-use load shapes for the residential, commercial, industrial, and transportation sectors. As a result of this update, NEMS-BRS estimates somewhat greater power plant emission impacts (in the form of reduced CO₂ and NO_x emissions) from increased central air conditioner and heat pump standards. Appendix M of the TSD includes an updated set of power plant emission impacts. These changes, which are discussed in the FONSI, do not affect DOE's finding of no significant impact.

The comments of some environmental advocates argue that DOE is required to prepare an environmental impact statement for today's final rule because, in their view, DOE is "rolling back" 13 SEER standards, and that constitutes a major agency action significantly affecting the quality of the environment. As explained in Section VI.H.5 of this Supplementary Information, DOE believes these comments are based on an erroneous premise, namely, that the January 22 final rule attained permanent status even though the rule never became effective. Instead, the correct baseline for assessing the impacts of today's rule, in DOE's view, are the existing energy conservation standards established by NAECA (*i.e.*, SEER of 10.0 and HSPF of 6.8 for split systems manufactured after January 1, 1992, SEER of 9.7 and HSPF of 6.6 for single package systems manufactured after January 1, 1993). The 12 SEER standard in today's rule will increase the energy efficiency of the most common type of central air conditioners by approximately 20 percent.

B. Review Under Executive Order 12866

Today's regulatory action has been determined to be an "economically significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

The draft submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in DOE's Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday

through Friday, telephone (202) 586-3142.

The October 5, 2000 NOPR contained a summary of the Regulatory Analysis which focused on the major alternatives considered in arriving at the approach to improving the energy efficiency of consumer products. 65 FR 59627-29. The alternatives considered in DOE's analysis are consumer product labeling, consumer education, prescriptive standards, consumer tax credits, consumer rebates, manufacturer tax credits, voluntary efficiency targets, low income subsidy, mass government purchases, and performance standards. The reader is referred to the complete "Regulatory Impact Analysis," which is contained in the TSD, available as indicated at the beginning of this notice or from the contact person named at the beginning of this notice. The TSD provides: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a Federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. Such an assessment of the impact of regulations on small businesses is not required if the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). To be categorized as a "small" air conditioning and warm air heating equipment manufacturer, a firm must employ no more than 750 employees.

In the October 5, 2000 NOPR, DOE discussed the potential impacts on small businesses of the October 5 proposed rule (corresponding to Trial Standard Level 3), and certified that the proposed standard levels would not have a significant economic impact on a substantial number of small entities. 65 FR 59629-30. DOE reported that nearly all small businesses engaged in the manufacture of central air conditioners and heat pumps produce products that DOE has called "niche" products. To avoid adversely impacting manufacturers of niche products, DOE proposed a separate product class for through-the-wall equipment, much of which is manufactured by small

manufacturers. *See* 65 FR 59609–11. In the preamble to the January 22 final rule, DOE addressed comments regarding the impacts more stringent standards might have on the availability of niche products, and although the final rule adopted the higher Trial Standard Level 4 standards, DOE deferred setting an amended standard for niche products. 66 FR 7175, 7196–97. The omission of niche products from the January 22 final rule also addressed the concern expressed by the Department of Justice about the impact of the October 5, 2000, proposed rule on small manufacturers (*see* preamble to January 22 final rule at 66 FR 7192). Because the final rule excluded most products made by small manufacturers, DOE affirmed its certification.

Today DOE publishes energy conservation standards for central air conditioners and heat pumps that correspond to Trial Standard Level 2. Primarily because of severe size constraints, DOE is establishing separate product classes for through-the-wall equipment and small duct, high velocity systems, which will be required to meet a lower SEER and HSPF. In light of these product class exceptions and after considering the information in the TSD and public comments, including the views of the Department of Justice (*see* October 19, 2001, letter in the Appendix to this notice), DOE has concluded that the 12 SEER standards in today's final rule will not have a disproportionate adverse impact on a substantial number of small entities. In its comments, the Office of Advocacy of the U.S. Small Business Administration stated that the proposed 12 SEER standard would substantially improve energy efficiency while preserving competition, innovation and jobs, and, therefore, it strongly supports the 12 SEER standard. On this basis, DOE certifies that today's rule will not have a significant impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis.

DOE's certification is based on an assessment of the impact the standards will have on small entities that would be directly affected by their implementation, which is all the Regulatory Flexibility Act requires. The assertion by ARI, in its petition for consideration (ARI, No. 138, at section m), that DOE is required to assess the indirect effects of proposed standards is contrary to established case law interpreting the Act.

D. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, this rule meets the relevant standards.

F. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this rule will not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies

or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies also must have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy on March 14, 2000. 65 FR 13735. DOE has examined today's rule and has determined that it 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. State regulations that may have existed on the products that are the subject of today's rule were preempted by the Federal standards established in NAECA. As discussed in Section VI.H.3, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in section 327 of EPCA (42 U.S.C. 6297).

H. Review Under the Unfunded Mandates Reform Act of 1995

With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). UMRA also requires each Federal agency to develop an effective process to permit timely input by state, local, and tribal governments on a proposed significant intergovernmental mandate. DOE's consultation process is described in a notice published in the **Federal Register** on March 18, 1997. 62 FR 12820. Today's rule will impose expenditures of \$100 million or more on the private sector. It does not contain a Federal intergovernmental mandate.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The "Regulatory

Impact Analysis" section of the TSD for this rule responds to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), today's rule would establish energy conservation standards for central air conditioners and heat pumps that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for today's rule.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE did not prepare a Family Policymaking Assessment.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For

any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposed action be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule would not have any adverse effects on the supply, distribution, or use of energy in the near term because it would not have any effect on the manufacture of central air conditioners and heat pumps until 2006. In the longer term, beginning in 2006, the standards in this rule would have a small positive impact on the electricity supply in the United States. The standards that DOE is adopting would represent a 20 percent improvement in the energy efficiency of split-system central air conditioners, and a 9 percent improvement in heating efficiency for heat pumps. The standards would improve the cooling efficiency of single-package heat pumps by 24 percent and the heating efficiency of single-package heat pumps by 12 percent.

As explained in Section VII of this Supplementary Information, DOE estimates the standards would save approximately 3 quads of energy over 25 years (2006 through 2030). Also, in determining whether these standards are economically justified, DOE considered as a benefit the potential of the standards to improve the reliability of the electric generation and distribution system or to reduce the environmental impacts associated with new power plants and transmission lines. See Section VI.G. of this Supplementary Information. DOE's analysis predicts today's standards would result in an estimated reduction in installed generation capacity in the year 2020 of approximately 8.7 gigawatts. This would be the equivalent of three 400 megawatt coal-fired plants and nineteen 400 megawatt gas-fired plants.

DOE disagrees with the NRDC's view that the levels in the January 22 final rule are the appropriate baseline for determining whether today's rule is likely to have a significant adverse effect on the supply, distribution, or use of energy and, thus, subject to the Executive Order's analysis requirement. (NRDC, No. 250 at p. 9). For reasons stated in Section III, we think the proper baseline is the currently effective standards (*i.e.*, the standards prescribed by NAECA). In any case, section 325 of EPCA requires DOE to weigh all of the significant costs and benefits associated with standard levels that are being

considered and not just avoided electricity costs. DOE has set forth its evaluation of costs and benefits elsewhere in this notice (*see* Section VII). DOE has also considered various regulatory and non-regulatory alternatives to today's proposed standard (*see* Section VIII.B., "Review Under Executive Order 12866," and the Regulatory Impact Analysis portion of the TSD). DOE has concluded that the costs associated with elevating the current standard to the standard level set forth in the January 22, 2001, final rule exceed the associated benefits, including the benefit of avoided electricity consumption.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. DOE also will submit the supporting analyses to the Comptroller General (GAO) and make them available to each House of Congress. The report will state that it has been determined that the rule is a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on May 14, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. The final rule amending 10 CFR part 430 published January 22, 2001 (66 FR 7170) is withdrawn.

3. Section 430.2 is amended by adding definitions for "effective date," "maximum allowable energy use," "maximum allowable water use," "minimum required energy efficiency," "small duct, high velocity system," and "through-the-wall air conditioner and heat pump" in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Effective date means the date on and after which a manufacturer must comply with an energy conservation standard in the manufacture of a covered product.

* * * * *

Maximum allowable energy use means an energy conservation standard for a covered product, expressed in terms of a maximum amount of energy that may be consumed, which is established by statute or by a final rule that has modified this part pursuant to a date DOE has selected consistent with the Congressional Review Act (5 U.S.C. 801–804) and any other applicable law, or the date on which DOE completes action on any timely-initiated administrative reconsideration, whichever is later.

* * * * *

Maximum allowable water use means an energy conservation standard for a covered product, expressed in terms of a maximum amount of water that may be consumed, which is established by statute or by a final rule that has modified this part pursuant to a date DOE has selected consistent with the Congressional Review Act (5 U.S.C. 801–804) and any other applicable law, or the date on which DOE completes action on any timely-initiated administrative reconsideration, whichever is later.

* * * * *

Minimum required energy efficiency means an energy conservation standard for a covered product, expressed in terms of a minimum efficiency quotient, which is established by statute or by a final rule that has modified this part pursuant to a date DOE has selected consistent with the Congressional Review Act (5 U.S.C. 801–804) and any other applicable law, or the date on which DOE completes action on any timely-initiated administrative reconsideration, whichever is later.

* * * * *

Small duct, high velocity system means a heating and cooling product that contains a blower and indoor coil combination that:

(1) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton of cooling; and

(2) When applied in the field, uses high velocity room outlets generally greater than 1000 fpm which have less than 6.0 square inches of free area.

* * * * *

Through-the-wall air conditioner and heat pump means a central air

conditioner or heat pump that is designed to be installed totally or partially within a fixed-size opening in an exterior wall, and:

(1) Is manufactured prior to January 23, 2010;

(2) Is not weatherized;

(3) Is clearly and permanently marked for installation only through an exterior wall;

(4) Has a rated cooling capacity no greater than 30,000 Btu/hr;

(5) Exchanges all of its outdoor air across a single surface of the equipment cabinet; and

(6) Has a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface described in paragraph (5) of this definition.

* * * * *

6. Section 430.32 of Subpart C is amended by revising paragraph (c) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(c) *Central air conditioners and central air conditioning heat pumps.* (1) Split system central air conditioners and central air conditioning heat pumps manufactured after January 1, 1992, and before January 23, 2006, and single package central air conditioners and central air conditioning heat pumps manufactured after January 1, 1993, and before January 23, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio	Heating seasonal performance factor
(i) Split systems	10.0	6.8
(ii) Single package systems	9.7	6.6

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 23, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio (SEER)	Heating seasonal performance factor (HSPF)
(i) Split system air conditioners	12	—
(ii) Split system heat pumps	12	7.4
(iii) Single package air conditioners ..	12	—

Product class	Seasonal energy efficiency ratio (SEER)	Heating seasonal performance factor (HSPF)
(iv) Single package heat pumps	12	7.4
(v)(A) Through-the-wall air conditioners and heat pumps—split system	10.9	7.1
(v)(B) Through-the-wall air conditioners and heat pumps—single package	10.6	7.0
(vi) Small duct, high velocity systems	10.0	¹ 6.8

¹ NAECA-prescribed value subject to amendment.

* * * * *

5. Section 430.34 is added to Subpart C to read as follows:

§ 430.34 Energy and water conservation standards amendments

The Department of Energy may not prescribe any amended standard which increases the maximum allowable energy use or, in the case of showerheads, faucets, water closets or urinals, the maximum allowable water use, or which decreases the minimum required energy efficiency of a covered product.

Appendix

[The following letters from Department of Justice will not appear in the Code of Federal Regulations.]

Department of Justice

Antitrust Division

A. Douglas Melamed

Acting Assistant Attorney General, Main Justice Building, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, (202) 514–2401/ (202) 616–2645 (f), antitrust@justice.usdoj.gov (internet), http://www.usdoj.gov (World Wide Web)

December 4, 2000.

Mary Anne Sullivan, General Counsel

Department of Energy

Washington, D.C. 20585

Dear General Counsel Sullivan: I am responding to your October 16, 2000 letter seeking the views of the Attorney General about the potential impact on competition of two proposed energy efficiency standards: one for clothes washers and the other for residential central air conditioners and heat pumps. Your request was submitted pursuant to Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act, 42 U.S.C. 6291, 6295 (“EPCA”), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy efficiency standards. The Attorney General’s responsibility for

responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

We have reviewed the proposed standards and the supplementary information published in the **Federal Register** notices and submitted to the Attorney General, which include information provided to the Department of Energy by manufacturers. We have additionally conducted interviews with members of the industries.

We have concluded that the proposed clothes washer standard would not adversely affect competition. In reaching this conclusion, we note that the proposed standard is based on a joint recommendation submitted to the Department of Energy by manufacturers and energy conservation advocates. That recommendation states that virtually all manufacturers of clothes washers who sell in the United States participated in arriving at the recommendation through their trade association, that the recommendation was developed in consultation with small manufacturers, and that the manufacturers believe the new standard would not likely reduce competition. We note further that, as the industry recommended, the proposed standard will be phased in over six years, which will allow companies that do not already have products that meet the proposed standard sufficient time to redesign their product lines.

With respect to the proposed residential central air conditioner and heat pump standard, we have concluded that there could be an adverse impact on competition. The proposed standard, Trial Standard Level 3, is expressed in terms of two industry measurements: SEER (Seasonal Energy Efficiency Ratio) and HSPF (Heating Seasonal Performance Factor).¹ These standards would change from the current central air conditioner and heat pump efficiency standards of 10 SEER/6.8 HSPF for split system air conditioners and heat pumps and 9.7 SEER/6.6 HSPF for single package air conditioners and heat pumps to 12 SEER for air conditioners and 13 SEER/7.7 HSPF for heat pumps.

We have identified three possible competitive problems presented by the proposed standards. First, the proposed 13 SEER heat pump standard would have a disproportionate impact on smaller manufacturers. Currently less than 20 percent of the total current product lines meet the proposed standards, but for some small manufacturers, 100 percent of their product lines fail to satisfy the proposed standard.

¹ The **Federal Register** notice also requested comments on a proposal to adopt a standard for steady-state cooling efficiency (EER) and discussed several options the Department of Energy is considering. The proposed rule set forth in the notice does not, however, include a provision regarding an EER standard, and the views of Department of Justice expressed in this letter are limited to the impact of any lessening of competition * * * that is likely to result from the imposition of the [proposed] standard," as required by EPCA. If the Department of Energy proposes a rule in the future incorporating an EER standard, DOE will then evaluate that proposed rule and express its views about the competitive impact of that standard.

Second, the proposed standard for heat pumps, and in some instances for air conditioners, would have an adverse impact on some manufacturers of these products (including those products referred to in the **Federal Register** notice as "niche products") used to retrofit existing housing and used in manufactured housing. These manufacturers could not make units that comply with the rule and fit into the available space.

Third, the proposed heat pump standard of 13 SEER could make heat pumps less competitive with alternative heating and cooling systems. Because the standard will result in increases in the size and cost of heat pumps, it is possible that purchasers will shift away from heat pumps to other systems that include electric resistance heat, reducing the competition that presently exists between heat pumps and those other systems.

Department of Justice urges the Department of Energy to take into account these possible impacts on competition in determining its final energy efficiency standard for air conditioners and heat pumps. The Department of Energy should consider setting a lower SEER standard for heat pumps, such as the standard included in Trial Standard Level 2, and a lower SEER standard for air conditioners for retrofit markets where there are space constraints (such as markets served by niche products) and for manufactured housing.

Sincerely,
A. Douglas Melamed

Department of Justice

Antitrust Division
John M. Nannes
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0001, (202) 514-2401 / (202) 616-2645
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<http://www.usdoj.gov> (World Wide Web)

April 5, 2001.

Eric J. Fygi,
*Acting General Counsel, Department of
Energy, Washington, DC 20585*

Dear Acting General Counsel Fygi: I am responding to your letter dated March 20, 2001, seeking the views of the Attorney General about the potential effect on competition of the final rule published on January 22, 2001, setting forth new energy efficiency standards for central air conditioners and heat pumps. You specifically asked for our views about the impact on competition of the rule's prescription of a 13 SEER (Seasonal Energy Efficiency Rating) standard for all product classes, except for niche products, and the desirability of reducing the standard to a 12 SEER level for all subcategories. Your letter requested our views by March 30, but your staff agreed to extend the response date to April 6.

As you noted in your letter to the Attorney General, the Antitrust Division had earlier expressed its views on the proposed rule, which provided for a 12 SEER standard for air conditioners and a 13 SEER standard for heat pumps. The Division had concluded that the 13 SEER standard for heat pumps could have an adverse effect on competition and urged the Department of Energy to adopt

a 12 SEER standard for heat pumps. We noted only minor concerns about the proposed 12 SEER standard for air conditioners.

We have reviewed the final rule and determined that the 13 SEER heat pump standard still raises competitive problems. We have further determined that the 13 SEER standard for air conditioners also raises competitive concerns.

In our earlier letter, we identified and described three competitive problems resulting from the proposed 13 SEER standard for heat pumps, including a disproportionate impact on smaller manufacturers² and an adverse effect on manufacturers of specialized equipment (the niche product manufacturers) and manufacturers of equipment for space-constrained installation sites (such as manufactured housing, which accounts for a significant percentage of the country's housing starts). The exception made in the final rule for niche product manufacturers may alleviate competitive problems for their products, but the exception does not eliminate the difficulties for manufacturers of standard equipment who could not make equipment that complied with the 13 SEER standard and still fit into space-constrained sites. The final rule also continues to have a disproportionate impact on smaller manufacturers of heat pumps. The 13 SEER standard for air conditioners raises the same kinds of competitive problems as the 13 SEER standard does for heat pumps.

We urge the Department of Energy to consider the impact on competition and to adopt a 12 SEER standard for all products covered by the rule.

Sincerely,
John M. Nannes

Department of Justice

Antitrust Division
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October 19, 2001

Lee Liberman Otis,
*General Counsel, Department of Energy,
Washington, DC 20585*

Dear General Counsel Otis: I am responding to your August 15, 2001 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy efficiency standards for residential central air conditioners and central air conditioning heat pumps. Your request was submitted pursuant to Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act, 42 U.S.C. 6291, 6295 ("EPCA"), which requires the Attorney General to make a determination of the impact of any lessening of competition that

² We noted in our previous letter that less than 20 percent of the total current heat pump product lines meet the new standard, but for some small manufacturers, 100 percent of their product lines failed to satisfy the standard. The same is true for air conditioner manufacturers when the standard is 13 SEER.

is likely to result from the imposition of proposed energy efficiency standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

The proposal provides for 12 SEER standards for all types of residential central air conditioners and central air conditioning heat pumps, except those that are installed through an exterior wall. We have reviewed the materials that accompanied your August 15 letter, the materials that you previously provided, and the comments submitted to

DOE, as well as the results of our industry interviews. Based on that review, we have concluded that the proposal would not adversely affect competition.

Sincerely,
Charles A. James

[FR Doc. 02-12680 Filed 5-22-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****Finding of No Significant Impact: Energy Conservation Program for Consumer Products**

AGENCY: Department of Energy.

ACTION: Finding of no significant impact for amended energy conservation standard for residential central air conditioners and heat pumps.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Based on an Environmental Assessment (EA), DOE/EA-1352, and revisions to the EA as documented in Appendix M of the Residential Central Air Conditioner and Heat Pump Technical Support Document (TSD), DOE has determined that the adoption of energy efficiency Trial Standard Level (TSL) 2 for residential central air conditioners and heat pumps, as adopted by the Final Rule entitled the "Energy Conservation Program for Consumer Products: Residential Central Air Conditioners and Heat Pumps Energy Conservation Standards," would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore, an environmental impact statement (EIS) is not required, and the Department is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: *Public Availability:* Copies of the EA and the TSD are available from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-41, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9127.

FOR FURTHER INFORMATION CONTACT: Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-41, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611.

For further information regarding the DOE NEPA process contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), 1000 Independence Avenue, SW., Washington, DC 20585-0119, (202) 586-4600.

SUPPLEMENTARY INFORMATION: *Description of the Proposed Action:* The proposed action is the establishment of a revised energy conservation standard (TSL 2) for residential central air conditioners and heat pumps.

Environmental Impacts: The EA and TSD evaluate the environmental impacts of a range of new energy conservation standards for residential central air conditioners and heat pumps. The results are presented for each potential trial standard level. Each potential trial standard level is an alternative action, and the environmental impacts of each alternative are compared to what would be expected to happen if no new standard were adopted, i.e., the "no action" alternative.

The main environmental impact is decreased emissions from fossil-fueled electricity generation. All of the minimum efficiency levels considered for this appliance product category would result in decreased electricity use and, therefore, a reduction in power plant emissions. The proposed

efficiency standard would generally decrease air pollution by decreasing future energy demand. The environmental analysis considers two pollutants, nitrogen oxides (NO_x) and sulfur dioxide (SO₂), and one emission, carbon. The results of the analysis show an estimated cumulative reduction of 24.2 million tons of carbon equivalent emissions and 83.2 thousand tons NO_x for TSL 2 through the year 2020. This would be a national reduction of 0.17% of carbon equivalent emissions, and 0.08% of NO_x. Because emissions of SO₂ from power plants are capped by clean air legislation, physical emissions of this pollutant from electricity generation will be only minimally affected by residential central air conditioners and heat pumps standards. The maximum SO₂ allowed by law will most likely still be produced, but because SO₂ emissions are traded, and if SO₂ emissions are lowered due to less power generation, then the cost of SO₂ emission credits may decrease slightly. Therefore, the EA did not consider changes in power sector SO₂ emissions because they will be negligible.

Determination

Based upon the EA, DOE has determined that the adoption of the proposed energy efficiency standard for residential central air conditioners and heat pumps would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an EIS is not required, and the Department is issuing this FONSI.

Issued in Washington, DC, on May 14, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02-12681 Filed 5-22-02; 8:45 am]

BILLING CODE 6450-01-P



Federal Register

**Thursday,
May 23, 2002**

Part IV

Postal Service

**Changes in Domestic Rates, Fees, and
Mail Classifications; Notice**

POSTAL SERVICE**Changes in Domestic Rates, Fees, and Mail Classifications****AGENCY:** Postal Service.**ACTION:** Notice of implementation of changes to domestic rates, fees, and the Domestic Mail Classification Schedule.

SUMMARY: This notice sets forth the changes to domestic rates, fees, and the Domestic Mail Classification Schedule to be implemented as a result of the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2001-1 (April 8, 2002).

EFFECTIVE DATE: June 30, 2002, unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., (202) 268-2989.

SUPPLEMENTARY INFORMATION: On September 24, 2001, pursuant to its authority under 39 U.S.C. 3621, et seq., the Postal Service filed with the Postal Rate Commission (PRC) a Request for a

Recommended Decision on Proposed Changes in Rates of Postage and Fees for Postal Services (Request). The PRC designated the filing as Docket No. R2001-1. On March 22, 2002, pursuant to its authority under 39 U.S.C. 3624, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on April 8, 2002. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2001-1 (April 8, 2002). The Governors approved the classification, fee, and rate changes recommended by the Commission. The attachments to the Governors' Decision, setting forth the classification, fee, and rate changes ordered into effect by the Governors, are set forth below.

In accordance with the Decision of the Governors and Resolution No. 02-7 of the Board of Governors, the Postal Service hereby gives notice that the

classification, fee, and rate changes set forth below will become effective at 12:01 a.m. on June 30, 2002, with the exception of the changes to Fee Schedule 945 related to the electronic option for return receipt service. Changes to schedule 945 related to the electronic option for return receipt service will become effective as soon as possible, at a time and date to be determined subsequently by the Board of Governors. Implementing regulations also become effective on June 30, 2002, as noted in a separate notice in the **Federal Register**. Also, in the future, the Postal Service will undertake to request a change to DMCS section 443.1a to delete the words "of ten cents", since the appropriate postage (12.4 cents) is specified in Rate Schedules 421 note 6 and 423 note 2.

Attachment A to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes

[Docket No. R2001-1]

April 8, 2002.

EXPRESS MAIL SCHEDULES 121, 122 AND 123

Weight (lbs.)	Schedule 121 same day air-port service	Schedule 122 custom designed	Schedule 123 next day & second day PO to PO	Schedule 123 next day & second day PO to addressee
0.5		\$10.70	\$10.40	\$13.65
1		14.90	14.60	17.85
2		14.90	14.60	17.85
3		18.10	17.80	21.05
4		21.25	20.95	24.20
5		24.35	24.05	27.30
6		27.45	27.15	30.40
7		30.50	30.20	33.45
8		31.80	31.50	34.75
9		33.25	32.95	36.20
10		34.55	34.25	37.50
11		36.25	35.95	39.20
12		38.90	38.60	41.85
13		40.80	40.50	43.75
14		41.85	41.55	44.80
15		43.15	42.85	46.10
16		44.70	44.40	47.65
17		46.20	45.90	49.15
18		47.60	47.30	50.55
19		49.05	48.75	52.00
20		50.50	50.20	53.45
21		51.95	51.65	54.90
22		53.40	53.10	56.35
23		54.90	54.60	57.85
24		56.30	56.00	59.25
25		57.70	57.40	60.65
26		59.20	58.90	62.15
27		60.60	60.30	63.55
28		62.10	61.80	65.05
29		63.55	63.25	66.50
30		65.00	64.70	67.95
31		66.45	66.15	69.40
32		67.95	67.65	70.90
33		69.30	69.00	72.25
34		70.85	70.55	73.80
35		72.20	71.90	75.15
36		73.75	73.45	76.70

EXPRESS MAIL SCHEDULES 121, 122 AND 123—Continued

Weight (lbs.)	Schedule 121 same day air-port service	Schedule 122 custom designed	Schedule 123 next day & second day PO to PO	Schedule 123 next day & second day PO to addressee
37		75.40	75.10	78.35
38		77.20	76.90	80.15
39		78.95	78.65	81.90
40		80.75	80.45	83.70
41		82.55	82.25	85.50
42		84.40	84.10	87.35
43		86.10	85.80	89.05
44		87.85	87.55	90.80
45		89.45	89.15	92.40
46		90.80	90.50	93.75
47		92.45	92.15	95.40
48		93.90	93.60	96.85
49		95.30	95.00	98.25
50		96.80	96.50	99.75
51		98.40	98.10	101.35
52		99.80	99.50	102.75
53		101.35	101.05	104.30
54		102.80	102.50	105.75
55		104.30	104.00	107.25
56		105.85	105.55	108.80
57		107.30	107.00	110.25
58		108.85	108.55	111.80
59		110.45	110.15	113.40
60		112.20	111.90	115.15
61		114.10	113.80	117.05
62		115.85	115.55	118.80
63		117.55	117.25	120.50
64		119.50	119.20	122.45
65		121.20	120.90	124.15
66		123.10	122.80	126.05
67		124.80	124.50	127.75
68		126.70	126.40	129.65
69		128.45	128.15	131.40
70		130.25	129.95	133.20

Schedules 121, 122 and 123 Notes

1. The applicable ½-pound rate is charged for matter sent in a flat-rate envelope provided by the Postal Service.
2. Add \$12.50 for each pickup stop.
3. Add \$12.50 for each Custom Designed delivery stop.

FIRST-CLASS MAIL RATE SCHEDULE
221

[Letters and Sealed Parcels]

	Rate
Single-Piece:	
First Ounce	\$0.370
Additional ounces	0.230
Nonmachinable surcharge	0.120
Qualified Business Reply Mail	0.340
Presorted:	
First ounce	0.352
Additional ounces	0.225
Nonmachinable surcharge	0.055
Heavy piece discount, per-piece	0.041
Automation Letters:	
Mixed AADC	0.309
AADC	0.301
3-digit	0.292
5-digit	0.278
Carrier route	0.275
Additional ounces	0.225
Heavy piece discount, per-piece	0.041
Automation Flats:	
Mixed ADC	0.341

FIRST-CLASS MAIL RATE SCHEDULE
221—Continued

[Letters and Sealed Parcels]

	Rate
ADC	0.333
3-digit	0.322
5-digit	0.302
Additional ounces	0.225
Nonmachinable surcharge	0.055
Heavy piece discount, per-piece	0.041

Schedule 221 Notes

1. A mailing fee of \$150.00 must be paid once each year at each office of mailing by any person who mails at presorted or automation rates. Payment of the fee allows the mailer to mail at any First-Class Mail rate. For presorted or automation pieces weighing more than 2 ounces, subtract 4.1 cents per-piece.
2. First-Class Mail rates apply through 13 ounces. Heavier pieces are subject to Priority Mail rates.

FIRST-CLASS MAIL RATE SCHEDULE
222

[Cards]

	Rate
Regular:	
Single-piece cards	\$0.230
Qualified Business Reply Mail	0.200
Presorted:	
Automation:	
Mixed AADC	0.194
AADC	0.187
3-digit	0.183
5-digit	0.176
Carrier route	0.170

Schedule 222 Notes

1. A mailing fee of \$150.00 must be paid once each year at each office of mailing by any person who mails at presorted or automation rates. Payment of the fee allows the mailer to mail at any First-Class Mail rate.

FIRST-CLASS MAIL SCHEDULE 223

[Priority Mail]

Weight (lbs.)	Local, Zones 1, 2 & 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	\$3.85	\$3.85	\$3.85	\$3.85	\$3.85	\$3.85
2	3.95	4.55	4.90	5.05	5.40	5.75
3	4.75	6.05	6.85	7.15	7.85	8.55
4	5.30	7.05	8.05	8.50	9.45	10.35
5	5.85	8.00	9.30	9.85	11.00	12.15
6	6.30	8.85	9.90	10.05	11.30	12.30
7	6.80	9.80	10.65	11.00	12.55	14.05
8	7.35	10.75	11.45	11.95	13.80	15.75
9	7.90	11.70	12.20	12.90	15.05	17.50
10	8.40	12.60	13.00	14.00	16.30	19.20
11	8.95	13.35	13.75	15.15	17.55	20.90
12	9.50	14.05	14.50	16.30	18.80	22.65
13	10.00	14.75	15.30	17.50	20.05	24.35
14	10.55	15.45	16.05	18.60	21.25	26.05
15	11.05	16.20	16.85	19.75	22.50	27.80
16	11.60	16.90	17.60	20.85	23.75	29.50
17	12.15	17.60	18.35	22.05	25.00	31.20
18	12.65	18.30	19.30	23.15	26.25	32.95
19	13.20	19.00	20.20	24.30	27.50	34.65
20	13.75	19.75	21.15	25.35	28.75	36.40
21	14.25	20.45	22.05	26.55	30.00	38.10
22	14.80	21.15	22.95	27.65	31.20	39.80
23	15.30	21.85	23.90	28.80	32.45	41.55
24	15.85	22.55	24.85	29.90	33.70	43.25
25	16.40	23.30	25.75	31.10	34.95	44.95
26	16.90	24.00	26.60	32.25	36.20	46.70
27	17.45	24.70	27.55	33.35	37.45	48.40
28	18.00	25.40	28.50	34.50	38.70	50.15
29	18.50	26.15	29.45	35.60	39.95	51.85
30	19.05	26.85	30.35	36.80	41.20	53.55
31	19.55	27.55	31.20	37.85	42.40	55.30
32	20.10	28.25	32.15	39.00	43.65	57.00
33	20.65	28.95	33.10	40.10	44.90	58.70
34	21.15	29.70	34.00	41.25	46.15	60.45
35	21.70	30.40	34.95	42.40	47.40	62.15
36	22.25	31.10	35.85	43.55	48.65	63.85
37	22.75	31.95	36.80	44.65	49.90	65.60
38	23.30	32.65	37.70	45.85	51.15	67.30
39	23.75	33.50	38.65	47.00	52.40	69.05
40	24.25	34.30	39.60	48.10	53.60	70.75
41	24.70	35.00	40.45	49.25	54.85	72.45
42	25.20	35.85	41.35	50.30	56.15	74.20
43	25.65	36.60	42.30	51.50	57.40	75.90
44	26.15	37.40	43.25	52.60	58.70	77.60
45	26.60	38.20	44.15	53.75	59.95	79.35
46	27.10	39.00	45.05	54.85	61.20	81.05
47	27.55	39.75	46.00	56.05	62.50	82.75
48	28.05	40.60	46.95	57.20	63.75	84.50
49	28.50	41.35	47.80	58.30	65.05	86.20
50	28.95	42.15	48.75	59.45	66.30	87.95
51	29.45	42.95	49.65	60.55	67.55	89.65
52	29.90	43.75	50.60	61.75	68.80	91.35
53	30.40	44.50	51.50	62.85	70.05	93.10
54	30.85	45.25	52.45	63.95	71.30	94.80
55	31.35	46.10	53.40	65.05	72.50	96.50
56	31.80	46.85	54.25	66.25	73.75	98.25
57	32.30	47.65	55.15	67.35	75.00	99.95
58	32.75	48.45	56.10	68.50	76.25	101.65
59	33.25	49.25	57.05	69.60	77.50	103.40
60	33.70	50.00	58.00	70.80	78.75	105.10
61	34.20	50.85	58.85	71.95	80.00	106.85
62	34.65	51.55	59.80	73.05	81.25	108.55
63	35.15	52.40	60.75	74.20	82.50	110.25
64	35.60	53.20	61.70	75.35	83.70	112.00
65	36.10	53.90	62.50	76.45	84.95	113.70
66	36.55	54.75	63.45	77.55	86.20	115.40
67	37.05	55.60	64.40	78.70	87.45	117.15
68	37.50	56.30	65.35	79.80	88.70	118.85
69	38.00	57.10	66.25	81.00	89.95	120.55

FIRST-CLASS MAIL SCHEDULE 223—Continued
[Priority Mail]

Weight (lbs.)	Local, Zones 1, 2 & 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
70	38.45	57.95	67.15	82.10	91.20	122.30

Schedule 223 Notes

- The 1-pound rate is charged for matter sent in a flat-rate envelope provided by the Postal Service.
- Add \$12.50 for each pickup stop.
- EXCEPTION: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.
- Pieces presented in mailings of at least 300 pieces or at least 500 pounds and meeting applicable Postal Service regulations for Priority Mail ADC, 3-digit and/or 5-digit presorts receive the applicable discounts of 12, 16, or 25 cents per-piece, respectively (experimental). A \$150.00 annual presort fee applies.

**STANDARD MAIL RATE SCHEDULE
321A**

[Regular Presorted Categories]

	Rate
Letter, minimum piece rate:	
Piece Rate.	
Basic	\$0.268
3/5-digit	0.248
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Nonletters, minimum piece rate:	
Piece Rate.	
Basic	0.344
3/5-digit	0.288
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Nonletters, piece and pound rate:	
Piece Rate.	
Basic	0.198
3/5-digit	0.142
Pound Rate	0.708
Destination Entry Discounts (off pound rate).	
BMC	0.100
SCF	0.125

Schedule 321A Notes

- A fee of \$150.00 must be paid each 12-month period for each bulk mailing permit.
- Residual shape pieces are subject to a surcharge of \$0.23 per-piece. For parcel barcode discount, deduct \$0.03 per-piece (machinable parcels only).
- For nonletters, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
- Nonmachinable letters are subject to a \$0.04 nonmachinable surcharge.

**STANDARD MAIL RATE SCHEDULE
321B**

[Regular Automation Categories]

	Rate
Letters, minimum piece rate:	
Piece Rate.	
Mixed AADC	\$0.219
AADC	0.212
3-digit	0.203
5-digit	0.190
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Flats, minimum piece rate:	

**STANDARD MAIL RATE SCHEDULE
321B—Continued**

[Regular Automation Categories]

	Rate
Piece Rate.	
Basic	0.300
3/5-digit	0.261
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Flats, piece and pound rate:	
Piece Rate.	
Basic	0.154
3/5-digit	0.115
Pound Rate	0.708
Destination Entry Discounts (off pound rate).	
BMC	0.100
SCF	0.125

Schedule 321B Notes

- A fee of \$150.00 must be paid once each 12-month period for each bulk mailing permit.
- Letters that weigh more than 3.3 ounces but not more than 3.5 ounces pay the nonletter piece and pound rate but receive a discount off the piece rate equal to the applicable nonletter minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct presort tier.
- For nonletters, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 322
[Enhanced Carrier Route]

	Rate
Letters, minimum piece rate:	
Piece Rate.	
Basic	\$0.194
High density	0.164
Saturation	0.152
Automation Basic	0.171
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
DDU	0.032
Nonletters, minimum piece rate:	
Piece Rate.	
Basic	0.194
High density	0.169
Saturation	0.160
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
DDU	0.032

**STANDARD MAIL RATE SCHEDULE
322—Continued**

[Enhanced Carrier Route]

	Rate
Nonletters, piece and pound rate:	
Piece Rate.	
Basic	0.068
High density	0.043
Saturation	0.034
Pound Rate	0.610
Destination Entry Discounts (off pound rate).	
BMC	0.100
SCF	0.125
DDU	0.157

Schedule 322 Notes

- A fee of \$150.00 must be paid each 12-month period for each bulk mailing permit.
- Residual shape pieces are subject to a surcharge of \$0.20 per-piece.
- For nonletters, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
- Pieces that otherwise meet the requirements for basic automation, high density, and saturation letter rates that weigh more than 3.3 ounces but not more than 3.5 ounces pay the nonletter piece and pound rate but receive a discount off the piece rate equal to the applicable nonletter minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct presort tier.
- For letter-size pieces, not meeting the automation requirements specified by the Postal Service, the mailer pays the nonletter rate for the applicable density tier.

**STANDARD MAIL RATE SCHEDULE
323A**

[Nonprofit Presorted Categories]

	Rate
Letters, minimum piece rate	
Piece Rate.	
Basic	\$0.165
3/5-digit	0.153
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Nonletters, minimum piece rate	
Piece Rate.	
Basic	0.230
3/5-digit	0.183
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Nonletters, piece and pound rate	

STANDARD MAIL RATE SCHEDULE
323A—Continued
[Nonprofit Presorted Categories]

	Rate
Piece Rate.	
Basic	0.110
3/5-digit	0.063
Pound Rate	0.584
Destination Entry Discounts (off pound rate).	
BMC	0.100
SCF	0.125

Schedule 323A Notes

1. A fee of \$150.00 must be paid each 12-month period for each bulk mailing permit.
2. Residual shape pieces are subject to a surcharge of \$0.23 per-piece. For parcel barcode discount, deduct \$0.03 per-piece (nonmachinable parcels only).
3. For nonletters, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Nonmachinable letters are subject to a \$0.02 nonmachinable surcharge.

STANDARD MAIL RATE SCHEDULE
323B
[Nonprofit Automation Categories]

	Rate
Letters, minimum piece rate:	
Piece Rate.	
Mixed AADC	\$0.144
AADC	0.136
3-digit	0.129
5-digit	0.114
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Flats, minimum piece rate:	
Piece Rate.	
Basic	0.189
3/5-digit	0.166

STANDARD MAIL RATE SCHEDULE
323B—Continued
[Nonprofit Automation Categories]

	Rate
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
Flats, piece and pound rate:	
Piece Rate.	
Basic	0.069
3/5-digit	0.046
Pound Rate	0.584
Destination Entry Discounts (off pound rate).	
BMC	0.100
SCF	0.125

Schedule 323B Notes

1. A fee of \$150.00 must be paid each 12-month period for each bulk mailing permit.
2. Letters that weigh more than 3.3 ounces but not more than 3.5 ounces pay the non-letter piece and pound rate but receive a discount off the piece rate equal to the applicable nonletter minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct presort tier.
3. For nonletters, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 324
[Nonprofit Enhanced Carrier Route]

	Rate
Letters, minimum piece rate:	
Piece Rate.	
Basic	\$ 0.126
High density	0.102
Saturation	0.095
Automation Basic	0.111
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
DDU	0.032

STANDARD MAIL RATE SCHEDULE
324—Continued
[Nonprofit Enhanced Carrier Route]

	Rate
Nonletters, minimum piece rate:	
Piece Rate.	
Basic	0.126
High density	0.110
Saturation	0.104
Destination Entry Discounts.	
BMC	0.021
SCF	0.026
DDU	0.032
Nonletters, piece and pound rate:	
Piece Rate.	
Basic	0.050
High density	0.034
Saturation	0.028
Pound Rate	0.370
Destination Entry Discounts (off pound rate).	
BMC	0.100
SCF	0.125
DDU	0.157

Schedule 324 Notes

1. A fee of \$150.00 must be paid each 12-month period for each bulk mailing permit.
2. Residual shape pieces are subject to a surcharge of \$0.20 per-piece.
3. For nonletters, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Pieces that otherwise meet the requirements for basic automation, high density, and saturation letter rates that weigh more than 3.3 ounces but not more than 3.5 ounces pay the nonletter piece and pound rate but receive a discount off the piece rate equal to the applicable nonletter minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct density tier.
5. For letter-size pieces, not meeting the automation requirements specified by the Postal Service, the mailer pays the nonletter rate for the applicable density tier.

PERIODICALS RATE SCHEDULE 421

[Outside County (Including Science of Agriculture)]

	Postage rate unit	Rate
Outside County Advertising:		
Destinating delivery unit	Pound	\$0.158
Destinating SCF	Pound	0.203
Destinating ADC	Pound	0.223
Zones 1 & 2	Pound	0.248
Zone 3	Pound	0.267
Zone 4	Pound	0.315
Zone 5	Pound	0.389
Zone 6	Pound	0.466
Zone 7	Pound	0.559
Zone 8	Pound	0.638
Nonadvertising		0.193
Science of Agriculture Advertising:		
Delivery unit	Pound	0.119
SCF	Pound	0.152
DADC	Pound	0.167
Zones 1 & 2	Pound	0.186
Zone 3	Pound	0.267
Zone 4	Pound	0.315
Zone 5	Pound	0.389
Zone 6	Pound	0.466
Zone 7	Pound	0.559

PERIODICALS RATE SCHEDULE 421—Continued
[Outside County (Including Science of Agriculture)]

	Postage rate unit	Rate
Zone 8	Pound	0.638
Nonadvertising		0.193
Outside County and Science of Agriculture Basic:		
Nonautomation	Piece	0.373
Automation letter	Piece	0.281
Automation flat	Piece	0.325
3-Digit:		
Nonautomation	Piece	0.324
Automation letter	Piece	0.249
Automation flat	Piece	0.283
5-Digit:		
Nonautomation	Piece	0.256
Automation letter	Piece	0.195
Automation flat	Piece	0.226
Carrier Route:		
Basic	Piece	0.163
High density	Piece	0.131
Saturation	Piece	0.112
Discounts:		
Percentage editorial discount	Piece	0.00074
Worksharing discount DDU	Piece	0.018
Worksharing discount DSCF	Piece	0.008
Worksharing discount DADC	Piece	0.002
Worksharing discount pallets	Piece	0.005
Worksharing dropship pallet discount		0.010

Schedule 421 Notes

1. The rates in this schedule also apply to Nonprofit (DMCS Section 422.2) and Classroom rate categories. These categories receive a 5 percent discount on all components of postage except advertising pounds. Moreover, the 5 percent discount does not apply to commingled nonsubscriber, nonrequestor, complimentary, and sample copies in excess of the 10 percent allowance under DMCS sections 412.34 and 413.42, or to Science of Agriculture mail.

2. Rates do not apply to otherwise Outside County mail that qualifies for the Within County rates in Schedule 423.

3. Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising pound portion and the advertising pound portion, as applicable.

4. For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

5. Advertising pound rate is not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.

6. For a Ride-Along item enclosed with or attached to a periodical, add \$0.124 per copy.

PERIODICALS RATE SCHEDULE 423
[Within County]

	Postage rate unit	Rate
Delivery Unit	Pound	\$0.112
All Other Zones	Pound	0.146
Basic:		
Nonautomation	Piece	0.106
Automation letter	Piece	0.050
Automation flat	Piece	0.077
3-Digit:		
Nonautomation	Piece	0.097
Automation letter	Piece	0.048
Automation flat	Piece	0.073
5-Digit:		
Nonautomation	Piece	0.087
Automation letter	Piece	0.046
Automation flat	Piece	0.067
Carrier Route:		
Basic	Piece	0.050
High density	Piece	0.034
Saturation	Piece	0.028
Discounts:		
Worksharing discount DDU	Piece	0.006

Schedule 423 Notes

1. Charges are computed by adding the appropriate per-piece charge to the appropriate pound charge.

2. For a Ride-Along item enclosed with or attached to a periodical, add \$0.124 per copy.

PACKAGE SERVICES RATE SCHEDULE 521.2A

[Parcel Post Inter-BMC Rates]

Weight (lbs.)	Zones 1&2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	\$3.69	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
2	3.85	3.85	4.14	4.14	4.49	4.49	4.49
3	4.65	4.65	5.55	5.65	5.71	5.77	6.32
4	4.86	5.20	6.29	6.93	7.14	7.20	7.87
5	5.03	5.71	6.94	7.75	8.58	8.64	9.43
6	5.63	6.01	7.44	8.50	9.52	9.90	11.49
7	5.80	6.28	7.91	9.20	10.35	11.39	12.83
8	5.98	6.53	8.30	9.84	11.11	12.54	15.04
9	6.11	6.76	8.74	10.45	11.83	13.38	17.04
10	6.28	7.57	9.10	11.01	12.50	14.17	18.14
11	6.41	7.80	9.47	11.54	13.13	14.92	19.15
12	6.54	8.01	9.80	12.04	13.72	15.62	20.10
13	6.67	8.19	10.12	12.51	14.28	16.27	20.99
14	6.80	8.42	10.43	12.95	14.81	16.90	21.84
15	6.92	8.61	10.73	13.38	15.31	17.49	22.64
16	7.02	8.79	11.00	13.78	15.79	18.05	23.41
17	7.15	8.94	11.28	14.16	16.24	18.59	24.13
18	7.25	9.11	11.52	14.52	16.68	19.09	24.82
19	7.37	9.28	11.77	14.87	17.09	19.58	25.48
20	7.46	9.43	11.98	15.20	17.48	20.05	26.12
21	7.57	9.59	12.20	15.52	17.86	20.49	26.72
22	7.66	9.72	12.42	15.82	18.22	20.92	27.30
23	7.76	9.89	12.65	16.11	18.57	21.32	27.85
24	7.83	10.01	12.83	16.39	18.90	21.72	28.39
25	7.93	10.14	13.03	16.66	19.22	22.09	28.90
26	8.01	10.27	13.21	16.92	19.53	22.46	29.39
27	8.11	10.40	13.38	17.17	19.83	22.81	29.87
28	8.18	10.52	13.58	17.41	20.11	23.14	30.32
29	8.27	10.65	13.75	17.64	20.39	23.47	30.76
30	8.35	10.76	13.90	17.87	20.65	23.78	31.19
31	8.44	10.86	14.06	18.08	20.91	24.08	31.60
32	8.50	10.99	14.22	18.29	21.16	24.37	32.00
33	8.58	11.10	14.38	18.49	21.40	24.65	32.38
34	8.66	11.18	14.51	18.69	21.63	24.93	32.75
35	8.74	11.30	14.66	18.88	21.85	25.19	33.11
36	8.80	11.39	14.82	19.06	22.07	25.45	33.45
37	8.87	11.48	14.93	19.23	22.28	25.69	33.79
38	8.94	11.60	15.07	19.41	22.48	25.93	34.12
39	9.02	11.67	15.19	19.57	22.68	26.17	34.43
40	9.09	11.78	15.32	19.73	22.87	26.39	34.74
41	9.17	11.88	15.44	19.89	23.06	26.61	35.04
42	9.23	11.96	15.56	20.04	23.24	26.82	35.33
43	9.28	12.05	15.68	20.19	23.41	27.03	35.61
44	9.35	12.12	15.79	20.33	23.58	27.23	35.88
45	9.41	12.22	15.91	20.47	23.75	27.43	36.14
46	9.48	12.30	16.02	20.61	23.91	27.62	36.40
47	9.56	12.39	16.12	20.74	24.06	27.80	36.65
48	9.61	12.47	16.24	20.86	24.22	27.98	36.89
49	9.66	12.55	16.34	20.99	24.36	28.15	37.13
50	9.72	12.61	16.42	21.11	24.51	28.32	37.36
51	9.79	12.70	16.54	21.23	24.65	28.49	37.59
52	9.84	12.78	16.63	21.34	24.79	28.65	37.80
53	9.91	12.84	16.70	21.45	24.92	28.81	38.02
54	9.96	12.94	16.81	21.56	25.05	28.96	38.22
55	10.01	12.97	16.91	21.67	25.17	29.11	38.43
56	10.09	13.08	16.99	21.77	25.30	29.25	38.62
57	10.14	13.14	17.09	21.87	25.42	29.39	38.82
58	10.19	13.21	17.16	21.97	25.53	29.53	39.00
59	10.26	13.27	17.26	22.07	25.65	29.67	39.19
60	10.31	13.34	17.35	22.16	25.76	29.80	39.36
61	10.39	13.43	17.42	22.25	25.87	29.92	39.54
62	10.44	13.48	17.50	22.34	25.97	30.05	39.71
63	10.47	13.56	17.59	22.43	26.08	30.17	39.87
64	10.52	13.61	17.66	22.51	26.18	30.29	40.03
65	10.58	13.68	17.74	22.60	26.28	30.41	40.19
66	10.65	13.75	17.81	22.68	26.37	30.52	40.35
67	10.71	13.81	17.89	22.76	26.47	30.63	40.50
68	10.75	13.87	17.98	22.84	26.56	30.74	40.64
69	10.80	13.92	18.05	22.91	26.65	30.84	40.79
70	10.86	14.00	18.12	22.98	26.74	30.95	40.93

PACKAGE SERVICES RATE SCHEDULE 521.2A—Continued

[Parcel Post Inter-BMC Rates]

Weight (lbs.)	Zones 1&2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
Oversized	41.70	46.73	54.12	65.84	79.69	92.81	120.72

Schedule 521.2A Notes

1. For Origin Bulk Mail Center (OBMC) Presort Discount, deduct \$1.17 per-piece.
2. For BMC Presort discount, deduct \$0.28 per-piece.
3. For barcode discount, deduct \$0.03 per-piece (machinable parcels only).
4. For nonmachinable parcels, add \$2.75 per-piece.
5. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
6. Pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15-pound parcel for the zone to which the parcel is addressed.
7. For each pickup stop, add \$12.50.

PACKAGE SERVICES RATE SCHEDULE 521.2B

[Parcel Post Intra-BMC Rates]

Weight (lbs.)	Local Zone	Zones 1&2	Zone 3	Zone 4	Zone 5
1	\$2.81	\$2.96	\$2.99	\$3.05	\$3.14
2	3.13	3.53	3.56	3.63	3.74
3	3.44	4.08	4.11	4.20	4.32
4	3.73	4.28	4.62	4.72	4.86
5	3.99	4.45	5.02	5.15	5.35
6	4.23	4.61	5.38	5.51	5.80
7	4.36	4.76	5.69	5.84	6.21
8	4.46	5.33	5.98	6.14	6.60
9	4.56	5.46	6.22	6.45	6.95
10	4.66	5.63	6.53	6.74	7.28
11	4.74	5.76	6.74	7.00	7.58
12	4.84	5.91	6.94	7.26	7.87
13	4.92	6.04	7.10	7.50	8.13
14	5.00	6.16	7.22	7.75	8.38
15	5.08	6.27	7.39	7.96	8.62
16	5.17	6.38	7.56	8.16	8.84
17	5.23	6.51	7.72	8.38	9.05
18	5.30	6.60	7.87	8.57	9.24
19	5.36	6.72	8.02	8.75	9.43
20	5.46	6.82	8.16	8.91	9.60
21	5.51	6.91	8.30	9.06	9.77
22	5.57	7.02	8.42	9.20	9.92
23	5.64	7.10	8.58	9.34	10.07
24	5.70	7.19	8.70	9.46	10.22
25	5.77	7.27	8.82	9.58	10.35
26	5.82	7.37	8.93	9.71	10.48
27	5.88	7.45	9.06	9.82	10.60
28	5.94	7.52	9.18	9.91	10.72
29	6.01	7.61	9.30	10.02	10.83
30	6.08	7.69	9.40	10.12	10.93
31	6.13	7.77	9.48	10.21	11.04
32	6.18	7.86	9.60	10.31	11.13
33	6.25	7.92	9.70	10.39	11.23
34	6.30	8.00	9.78	10.47	11.31
35	6.35	8.06	9.89	10.55	11.40
36	6.40	8.13	9.97	10.62	11.48
37	6.44	8.22	10.06	10.70	11.56
38	6.49	8.28	10.15	10.77	11.63
39	6.56	8.36	10.25	10.83	11.70
40	6.61	8.41	10.32	10.89	11.77
41	6.67	8.50	10.43	10.95	11.84
42	6.72	8.55	10.50	11.02	11.90
43	6.77	8.61	10.58	11.08	11.95
44	6.84	8.68	10.66	11.14	12.00
45	6.88	8.73	10.73	11.30	12.05
46	6.92	8.82	10.82	11.35	12.10
47	6.98	8.89	10.88	11.40	12.15
48	7.03	8.94	10.97	11.44	12.20
49	7.07	9.01	11.04	11.49	12.25
50	7.12	9.04	11.11	11.53	12.30
51	7.18	9.13	11.17	11.58	12.35
52	7.21	9.19	11.27	11.62	12.40
53	7.26	9.22	11.32	11.65	12.45

PACKAGE SERVICES RATE SCHEDULE 521.2B—Continued

[Parcel Post Intra-BMC Rates]

Weight (lbs.)	Local Zone	Zones 1&2	Zone 3	Zone 4	Zone 5
54	7.32	9.28	11.36	11.70	12.50
55	7.37	9.34	11.40	11.75	12.55
56	7.40	9.40	11.44	11.79	12.60
57	7.45	9.47	11.46	11.81	12.65
58	7.50	9.52	11.50	11.85	12.70
59	7.55	9.57	11.53	11.89	12.75
60	7.57	9.64	11.56	11.91	12.80
61	7.66	9.70	11.59	11.95	12.85
62	7.68	9.75	11.62	12.01	12.90
63	7.73	9.80	11.64	12.08	12.95
64	7.78	9.86	11.66	12.13	13.00
65	7.82	9.91	11.70	12.19	13.05
66	7.85	9.98	11.72	12.26	13.10
67	7.92	10.04	11.75	12.33	13.15
68	7.96	10.06	11.76	12.37	13.20
69	7.97	10.13	11.78	12.44	13.25
70	7.98	10.18	11.81	12.50	13.30
Oversized	23.78	34.47	34.79	35.48	36.53

Schedule 521.2B Notes

1. For barcode discount, deduct \$0.03 per-piece (machinable parcels only).
2. For nonmachinable parcels, add \$1.35 per-piece.
3. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
4. Pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15-pound parcel for the zone to which the parcel is addressed.
5. For each pickup stop, add \$12.50.

PACKAGE SERVICES RATE SCHEDULE 521.2C

[Parcel Post Parcel Select Destination Bulk Mail Center Rates]

Weight (lbs.)	Zone			
	1&2	3	4	5
1	\$2.01	\$2.26	\$2.49	\$3.09
2	2.24	2.76	3.19	3.69
3	2.49	3.27	3.84	4.28
4	2.72	3.75	4.41	4.81
5	2.94	4.20	4.82	5.30
6	3.15	4.60	5.16	5.75
7	3.34	4.96	5.47	6.18
8	3.53	5.32	5.76	6.56
9	3.71	5.64	6.05	6.91
10	3.88	5.97	6.71	7.24
11	4.04	6.27	6.96	7.54
12	4.20	6.56	7.22	7.84
13	4.35	6.80	7.46	8.10
14	4.50	6.92	7.71	8.35
15	4.64	7.08	7.92	8.58
16	4.77	7.24	8.13	8.81
17	4.91	7.39	8.35	9.01
18	5.03	7.54	8.53	9.21
19	5.16	7.68	8.72	9.40
20	5.28	7.82	8.88	9.56
21	5.40	7.96	9.02	9.73
22	5.51	8.08	9.17	9.89
23	5.62	8.23	9.31	10.05
24	5.73	8.34	9.43	10.18
25	5.84	8.46	9.55	10.32
26	5.94	8.56	9.67	10.45
27	6.05	8.69	9.78	10.57
28	6.14	8.81	9.88	10.68
29	6.24	8.92	10.00	10.79
30	6.34	9.02	10.09	10.90
31	6.43	9.10	10.17	11.01
32	6.52	9.21	10.27	11.11
33	6.61	9.30	10.36	11.19
34	6.70	9.39	10.43	11.28

PACKAGE SERVICES RATE SCHEDULE 521.2C—Continued

[Parcel Post Parcel Select Destination Bulk Mail Center Rates]

Weight (lbs.)	Zone			
	1&2	3	4	5
35	6.78	9.49	10.52	11.37
36	6.87	9.94	10.60	11.45
37	6.95	10.03	10.66	11.53
38	7.03	10.12	10.74	11.60
39	7.11	10.21	10.80	11.68
40	7.19	10.29	10.86	11.74
41	7.27	10.40	10.92	11.80
42	7.34	10.47	10.99	11.87
43	7.42	10.56	11.05	12.16
44	7.49	10.63	11.11	12.45
45	7.56	10.69	11.26	12.76
46	7.63	10.79	11.31	13.06
47	7.70	10.85	11.36	13.37
48	7.77	10.94	11.41	13.69
49	7.84	11.01	11.46	14.01
50	7.91	11.08	11.50	14.35
51	7.97	11.15	11.55	14.68
52	8.04	11.23	11.59	15.02
53	8.10	11.28	11.63	15.38
54	8.16	11.33	11.68	15.74
55	8.23	11.37	11.73	15.89
56	8.29	11.40	11.75	15.96
57	8.35	11.43	11.78	16.06
58	8.41	11.47	11.82	16.14
59	8.47	11.50	11.85	16.21
60	8.52	11.53	11.88	16.30
61	8.58	11.56	11.92	16.38
62	8.64	11.59	11.98	16.44
63	8.69	11.61	12.05	16.52
64	8.75	11.64	12.10	16.59
65	8.80	11.67	12.16	16.65
66	8.86	11.70	12.24	16.74
67	8.91	11.72	12.29	16.79
68	8.96	11.73	12.34	16.86

PACKAGE SERVICES RATE SCHEDULE 521.2C—Continued

[Parcel Post Parcel Select Destination Bulk Mail Center Rates]

Weight (lbs.)	Zone			
	1&2	3	4	5
69	9.01	11.75	12.40	16.93
70	9.06	11.77	12.47	16.99
Oversized	18.14	24.33	32.81	34.10

Schedule 521.2C Notes

1. For barcode discount, deduct \$0.03 per-piece (machinable parcels only). Barcode discount is not available for DBMC mail entered at an ASF, except at the Phoenix, AZ, ASF.
2. For nonmachinable parcels, add \$1.45 per-piece.
3. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
4. Pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15-pound parcel for the zone to which the parcel is addressed.
5. A mailing fee of \$150.00 must be paid once each 12-month period for Parcel Select.

PACKAGE SERVICES RATE SCHEDULE 521.2D

[Parcel Post Parcel Select Destination Sectional Center Facility Rates]

Weight (lbs.)	Rate
1	\$1.53
2	1.71
3	1.85
4	1.99
5	2.12

PACKAGE SERVICES RATE SCHEDULE
521.2D—Continued[Parcel Post Parcel Select Destination
Sectional Center Facility Rates]

Weight (lbs.)	Rate
6	2.24
7	2.35
8	2.45
9	2.56
10	2.65
11	2.74
12	2.83
13	2.92
14	3.00
15	3.10
16	3.19
17	3.28
18	3.36
19	3.45
20	3.53
21	3.61
22	3.68
23	3.76
24	3.83
25	3.90
26	3.97
27	4.04
28	4.11
29	4.17
30	4.24
31	4.30
32	4.36
33	4.42
34	4.48
35	4.54
36	4.59
37	4.65
38	4.70
39	4.76
40	4.81
41	4.86
42	4.91
43	4.96
44	5.01
45	5.06
46	5.11
47	5.16
48	5.20
49	5.25
50	5.29
51	5.34
52	5.38
53	5.42
54	5.46
55	5.51
56	5.55
57	5.59
58	5.63
59	5.67
60	5.71
61	5.74
62	5.78

PACKAGE SERVICES RATE SCHEDULE
521.2D—Continued[Parcel Post Parcel Select Destination
Sectional Center Facility Rates]

Weight (lbs.)	Rate
63	5.82
64	5.86
65	5.89
66	5.93
67	5.97
68	6.00
69	6.04
70	6.07
Oversized	11.95

Schedule 521.2D Notes

1. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

2. Pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15-pound parcel for the zone to which the parcel is addressed.

3. A mailing fee of \$150.00 must be paid once each 12-month period for Parcel Select.

4. For nonmachinable parcels sorted to 3-digit ZIP code areas, add \$1.09 per-piece.

PACKAGE SERVICES RATE SCHEDULE
521.2E[Parcel Post Parcel Select Destination Delivery
Unit Rates]

Weight (lbs.)	Rate
1	\$1.23
2	1.28
3	1.33
4	1.38
5	1.43
6	1.47
7	1.51
8	1.55
9	1.58
10	1.62
11	1.65
12	1.68
13	1.71
14	1.74
15	1.77
16	1.79
17	1.82
18	1.85
19	1.87
20	1.89
21	1.92
22	1.94
23	1.96
24	1.98
25	2.00
26	2.02

PACKAGE SERVICES RATE SCHEDULE
521.2E—Continued[Parcel Post Parcel Select Destination Delivery
Unit Rates]

Weight (lbs.)	Rate
27	2.04
28	2.06
29	2.07
30	2.09
31	2.10
32	2.11
33	2.12
34	2.13
35	2.14
36	2.15
37	2.16
38	2.17
39	2.18
40	2.19
41	2.20
42	2.21
43	2.22
44	2.23
45	2.24
46	2.25
47	2.26
48	2.27
49	2.28
50	2.29
51	2.30
52	2.31
53	2.32
54	2.33
55	2.34
56	2.35
57	2.36
58	2.37
59	2.38
60	2.39
61	2.40
62	2.41
63	2.42
64	2.43
65	2.44
66	2.45
67	2.46
68	2.47
69	2.48
70	2.49
Oversized	6.98

Schedule 521.2E Notes

1. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

2. Pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15-pound parcel for the zone to which the parcel is addressed.

3. A mailing fee of \$150.00 must be paid once each 12-month period for Parcel Select.

PACKAGE SERVICES RATE SCHEDULE 522A

[Bound Printed Matter Single-Piece Rates]

Weight (pounds)	Zones						
	1&2	3	4	5	6	7	8
1.0	\$1.87	\$1.92	\$1.96	\$2.04	\$2.11	\$2.20	\$2.37
1.5	1.87	1.92	1.96	2.04	2.11	2.20	2.37
2.0	1.94	2.00	2.06	2.16	2.26	2.38	2.60

PACKAGE SERVICES RATE SCHEDULE 522A—Continued

[Bound Printed Matter Single-Piece Rates]

Weight (pounds)	Zones						
	1&2	3	4	5	6	7	8
2.5	2.01	2.09	2.16	2.29	2.41	2.56	2.84
3.0	2.08	2.17	2.26	2.41	2.56	2.74	3.07
3.5	2.15	2.26	2.36	2.54	2.71	2.92	3.31
4.0	2.22	2.34	2.46	2.66	2.86	3.10	3.54
4.5	2.29	2.43	2.56	2.79	3.01	3.28	3.78
5.0	2.36	2.51	2.66	2.91	3.16	3.46	4.01
6.0	2.50	2.68	2.86	3.16	3.46	3.82	4.48
7.0	2.64	2.85	3.06	3.41	3.76	4.18	4.95
8.0	2.78	3.02	3.26	3.66	4.06	4.54	5.42
9.0	2.92	3.19	3.46	3.91	4.36	4.90	5.89
10.0	3.06	3.36	3.66	4.16	4.66	5.26	6.36
11.0	3.20	3.53	3.86	4.41	4.96	5.62	6.83
12.0	3.34	3.70	4.06	4.66	5.26	5.98	7.30
13.0	3.48	3.87	4.26	4.91	5.56	6.34	7.77
14.0	3.62	4.04	4.46	5.16	5.86	6.70	8.24
15.0	3.76	4.21	4.66	5.41	6.16	7.06	8.71

Schedule 522A Notes

1. For barcode discount, deduct \$0.03 per-piece (machinable parcels and automatable flats only).
2. For flats, deduct \$0.08 per-piece.

PACKAGE SERVICES RATE SCHEDULE 522B

[Bound Printed Matter Presorted and Carrier Route Rates Flats, Parcels, and Irregular Parcels]

	Zones						
	1&2	3	4	5	6	7	8
Flats:							
Per-Piece:							
Presorted	\$1.078	\$1.078	\$1.078	\$1.078	\$1.078	\$1.078	\$1.078
Carrier Route	.978	.978	.978	.978	.978	.978	.978
Per-Pound	.090	.112	.149	.198	.248	.308	.419
Parcels and Irregular Parcels:							
Per-Piece:							
Presorted	1.155	1.155	1.155	1.155	1.155	1.155	1.155
Carrier Route	1.055	1.055	1.055	1.055	1.055	1.055	1.055
Per-Pound	.090	.112	.149	.198	.248	.308	.419

Schedule 522B Notes

1. For barcode discount, deduct \$0.03 per-piece (machinable parcels and automatable flats only). Barcode discount is not available for Carrier Route rates.

PACKAGE SERVICES RATE SCHEDULE 522C

[Bound Printed Matter Presorted Rates, Destination Entry Flats, Parcels, and Irregular Parcels]

	DDU	DSCF	DBMC			
			Zone 1&2	Zone 3	Zone 4	Zone 5
Flats:						
Per-Piece	\$0.532	\$0.603	\$0.818	\$0.818	\$0.818	\$0.818
Per-Pound	0.030	0.060	0.073	0.102	0.139	0.187
Parcels and Irregular Parcels:						
Per-Piece	0.609	0.680	0.895	0.895	0.895	0.895
Per-Pound	0.030	0.060	0.073	0.102	0.139	0.187

Schedule 522C Notes

1. For barcode discount, deduct \$0.03 per-piece (machinable parcels and automatable flats only). Barcode discount is not available for DDU or DSCF rates or DBMC mail entered at an ASF (except Phoenix, AZ, ASF).
2. A mailing fee of \$150.00 must be paid once each 12-month period to mail at any destination entry Bound Printed Matter rate.
3. The DDU rate is not available for flats that weigh 1 pound or less.

PACKAGE SERVICES RATE SCHEDULE 522D

[Bound Printed Matter Carrier Route Rates, Destination Entry Flats, Parcels, and Irregular Parcels]

	DDU	DSCF	DBMC			
			Zone 1&2	Zone 3	Zone 4	Zone 5
Flats:						
Per-Piece	\$0.432	\$0.503	\$0.718	\$0.718	\$0.718	\$0.718
Per-Pound	0.030	0.060	0.073	0.102	0.139	0.187
Parcels and Irregular Parcels:						
Per-Piece	0.509	0.580	0.795	0.795	0.795	0.795
Per-Pound	0.030	0.060	0.073	0.102	0.139	0.187

Schedule 522D Notes

1. A mailing fee of \$150.00 must be paid once each 12-month period to mail at any destination entry Bound Printed Matter rate.

PACKAGE SERVICES RATE SCHEDULE
523

[Media Mail]

	Rate
First Pound:	
Single-Piece	\$1.42
5-Digit Presort	0.80
Basic Presort	1.12
Each additional pound, through 7 pounds	0.42
Each additional pound, over 7 pounds	0.30

Schedule 523 Notes

1. A mailing fee of \$150.00 must be paid once each 12-month period to mail at any Media Mail presorted rate.

2. For barcode discount, deduct \$0.03 per-piece (machinable parcels only). Barcode discount is not available for pieces mailed at the 5-digit rate.

PACKAGE SERVICES RATE SCHEDULE
524.

[Library Mail]

	Rate
First Pound:	
Single-Piece	\$1.35
5-Digit Presort	0.76
Basic Presort	1.06
Each additional pound, through 7 pounds	0.40
Each additional pound, over 7 pounds	0.29

Schedule 524.

1. A mailing fee of \$150.00 must be paid once each 12-month period to mail at any Library Mail presorted rate.

2. For barcode discount, deduct \$0.03 per-piece (machinable parcels only). Barcode discount is not available for pieces mailed at the 5-digit rate.

FEE SCHEDULE 911

[Address Corrections]

Description	Fee
Manual correction, each	\$0.70
Electronic correction, each	0.20

FEE SCHEDULE 921

[Post Office Boxes and Caller Service]

Box Size	Fee group							
	1	2	3	4	5	6	7	E
I. Post Office Boxes:								
Semi-annual Box Fees:								
1	\$35.00	\$29.00	\$24.00	\$19.00	\$13.00	\$12.00	\$9.00	\$0.00
2	50.00	45.00	38.00	34.00	22.00	18.00	13.00	0.00
3	100.00	80.00	68.00	63.00	34.00	33.00	23.00	0.00
4	205.00	170.00	118.00	110.00	65.00	60.00	40.00	0.00
5	330.00	315.00	209.00	175.00	125.00	97.00	70.00	0.00

1. A customer ineligible for carrier delivery may obtain a post office box at Group E fees, subject to administrative decisions regarding customer's proximity to post office.

2. Box Size 1=under 296 cubic inches; 2=296-499 cubic inches; 3=500-999 cubic inches; 4=1000-1999 cubic inches; 5=2000 cubic inches and larger.

KEY DUPLICATION AND LOCK CHARGES

Description	Fee
Key duplication or replacement	\$4.40
Post office box lock replacement	11.00

KEY DUPLICATION AND LOCK
CHARGES—Continued

Description	Fee
II. Caller Service:	

KEY DUPLICATION AND LOCK
CHARGES—Continued

Description	Fee
Semi-annual Caller Service Fee ...	412.00

FEE SCHEDULE 912

Description	Fee
Zip Coding of Mailing Lists	
Per 1,000 addresses, or fraction ..	\$100.00
Correction of Mailing Lists	
Per submitted address	\$0.30
Minimum charge per list (30 items)	9.00
Address Changes for Election Boards and Registration Commissions	
Per change of address	\$0.27
Sequencing of Address Cards	
Per correction	\$0.30
Insertion of blanks	0.00

Schedule 912 Notes.

1. When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the routes involved.

KEY DUPLICATION AND LOCK
CHARGES—Continued

Description	Fee
Annual Call Number Reservation Fee	32.00

FEE SCHEDULE 931
[Business Reply Mail]

Description	Fee
Regular (no accounting fee):	
Permit fee (per year) ...	\$150.00
Per-piece charge	0.60
Regular (with accounting fee):	
Permit fee (per year) ...	150.00
Accounting fee (per year)	475.00
Per-piece charge	0.10
Qualified Business Reply Mail, low-volume	
Permit fee (per year) ...	150.00
Accounting fee (per year)	475.00
Per-piece charge, basic	0.06
Qualified Business Reply Mail, high-volume	
Permit fee (per year) ...	150.00
Accounting fee (per year)	475.00
Quarterly fee	1,800.00

FEE SCHEDULE 931—Continued
[Business Reply Mail]

Description	Fee
Per-piece charge, high-volume	0.008
Bulk Weight Averaged Permit fee (per year) ...	150.00
Accounting fee (per year)	475.00
Per-piece charge, bulk weight averaged	0.01
Monthly maintenance fee	750.00

FEE SCHEDULE 932
[Merchandise Return Service]

Description	Fee
Permit fee (per year)	\$150.00
Accounting fee (per year)	475.00
Per-piece charge	0.00

FEE SCHEDULE 933
[On-Site Meter Service]

Description fee	Fee
Per employee, per visit	\$35.00
Per meter reset or examined ...	5.00
Per meter checked into or out of service	4.00

FEE SCHEDULE 942
[Registered Mail]

Declared value	Fee (in addition to postage)	Handling charge
\$0.00	\$7.50	
0.01 to 100	8.00	
100.01 to 500	8.85	
500.01 to 1,000	9.70	
1,000.01 to 2,000	10.55	
2,000.01 to 3,000	11.40	
3,000.01 to 4,000	12.25	
4,000.01 to 5,000	13.10	
5,000.01 to 6,000	13.95	
6,000.01 to 7,000	14.80	
7,000.01 to 8,000	15.65	
8,000.01 to 9,000	16.50	
9,000.01 to 10,000	17.35	
10,000.01 to 11,000	18.20	
11,000.01 to 12,000	19.05	
12,000.01 to 13,000	19.90	
13,000.01 to 14,000	20.75	
14,000.01 to 15,000	21.60	
15,000.01 to 16,000	22.45	
16,000.01 to 17,000	23.30	
17,000.01 to 18,000	24.15	
18,000.01 to 19,000	25.00	
19,000.01 to 20,000	25.85	
20,000.01 to 21,000	26.70	
21,000.01 to 22,000	27.55	
22,000.01 to 23,000	28.40	
23,000.01 to 24,000	29.25	
24,000.01 to 25,000	30.10	
25,000.01 to \$1 million	30.10	plus \$0.85 handling charge for each \$1,000 or fraction thereof over \$25,000.00.

Schedule 933 Notes

1. Fee for checking meters into or out of service does not apply if a Postal Service-approved automated process is used to check a secured meter into and out of service.

Fee Schedule 934

[Reserved]

FEE SCHEDULE 935
[Bulk Parcel Return Service]

Description	Fee
Permit fee (per year)	\$150.00
Accounting fee (per year)	475.00
Per-piece charge	1.80

FEE SCHEDULE 936
[Shipper Paid Forwarding]

Description	Fee
Accounting fee (per year)	\$475.00

FEE SCHEDULE 941
[Certified Mail]

Description	Fee
Fee per-piece, in addition to postage	\$2.30

FEE SCHEDULE 942—Continued
[Registered Mail]

Declared value	Fee (in addition to postage)	Handling charge
Over \$1 million to \$15 million	858.85	plus \$0.85 handling charge for each \$1,000 or fraction thereof over \$1,000,000.00.
Over \$15 million	12,758.85	plus amount determined by the Postal Service based on weight, space, and value.

Schedule 942 Notes

1. Articles with a declared value of more than \$25,000 can be registered, but compensation for loss or damage is limited to \$25,000.

FEE SCHEDULE 943
[Insurance]

Description	Fee
Express Mail Insurance	
Merchandise coverage:	
\$0.01 to 100.00	\$0.00
Fee per \$100 or fraction over \$100, up to \$5,000	1.00
Document reconstruction coverage:	
\$0.00 to 100.00	0.00
Regular Insurance	
Amount of coverage:	
\$0.01 to 50.00	1.30
\$50.00 to 100.00	2.20
100.01 to 5,000.00	\$2.20 plus \$1.00 for each \$100 or fraction thereof over \$100.
Bulk Insurance	
Amount of coverage:	
\$0.01 to 50.00	0.70
50.01 to 100.00	1.40
100.01 to 5,000.00	\$1.40 plus \$1.00 for each \$100 or fraction thereof over \$100.

Schedule 943 Notes

1. Fees for bulk insurance represent a discount of \$0.60 per-piece for coverage between \$0.01 and \$50.00 and a discount of \$0.80 for coverage between \$50.01 and \$5,000.00.

FEE SCHEDULE 944
[Collect on Delivery]

Description	Fee
Amount to be collected:	
\$ 0.01 to \$ 50	\$4.50
50.01 to 100	5.50
100.01 to 200	6.50
200.01 to 300	7.50
300.01 to 400	8.50
400.01 to 500	9.50
500.01 to 600	10.50
600.01 to 700	11.50
700.01 to 800	12.50
800.01 to 900	13.50
900.01 to 1000	14.50
Notice of nondelivery	3.00
Alteration of COD changes	3.00
Designation of new addressee	3.00
Registered COD	4.00

FEE SCHEDULE 945 [Return Receipts]		FEE SCHEDULE 948 [Delivery Confirmation]		FEE SCHEDULE 952 [Special Handling]	
Description	Fee	Description	Fee	Description	Fee
I. Return Receipt: Requested at time of mailing: Original signature Copy of signature (electronic) Requested after mailing	 \$1.75 1.30 3.25	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail	 \$0.13 0.55 0.00 0.45	For pieces weighing: Not more than 10 pounds More than 10 pounds	 \$5.95 8.25
II.Return Receipt for Merchandise: Requested at time of mailing Delivery record	 \$3.00 3.25	Standard Mail: Electronic Package Services Parcel Select: Electronic Other Package Services: Electronic Retail	 0.13 0.00 0.13 0.55	FEE SCHEDULE 961 [Stamped Envelopes]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 949 [Signature Confirmation]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Plain Stamped Envelopes: Basic, size 6¾, each Basic, size 6¾, 500 Basic, over size 6¾, each Basic, over size 6¾, 500 Personalized Stamped Envelopes: Basic, size 6¾, 50 Basic, size 6¾, 500 Basic, over size 6¾, 50 Basic, over size 6¾, 500	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 962 [Stamped Cards]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
FEE SCHEDULE 947 [Certificate of Mailing]		FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
Description	Fee	Description		Description	
Individual Pieces: Original certificate of mailing for listed pieces of all classes of ordinary mail Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	 \$0.90 0.30 0.90	First-Class Mail Letters and Sealed Parcels: Electronic Retail Priority Mail: Electronic Retail Package Services: Electronic Retail		Single card Double reply-paid card Sheet of 40 cards (uncut)	
Bulk: Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: Up to 1,000 pieces (one certificate for total number) Each additional 1,000 pieces or fraction Duplicate copy	 4.50 0.50 0.90	FEE SCHEDULE 951 [Parcel Air Lift]		FEE SCHEDULE 971 [Money Orders]	
FEE SCHEDULE 946 [Restricted Delivery]		FEE SCHEDULE 951 [Parcel Air Lift]		Description	
Description	Fee	Description		Fee	
Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
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Description	Fee	Description		Fee	
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Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
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Per-piece	\$3.50	FEE SCHEDULE 951 [Parcel Air Lift]		Domestic (\$0.01 to \$500.00) Domestic (\$500.01 to \$1,000.00) APO/FPO (\$0.01 to \$1,000.00) Inquiry, including a copy of paid money order	
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This provision expires the later of:
 a. three years after the implementation date specified by the Postal Service Board of Governors, or
 b. if, by the expiration date specified in (a), a proposal to make Net Post

Mailing Online permanent is pending before the Postal Rate Commission, the later of:

1. three months after the Commission takes action on such proposal under section 3624 of Title 39, or

2. —if applicable—on the implementation date for a permanent Net Post Mailing Online.

FEE SCHEDULE 1000

[Miscellaneous Fees]

Description	Fee
First-Class Presorted Mailing Fee (per year)	\$150.00
Standard Mail Mailing Fee (per year)	150.00
Periodicals.	
A. Original Entry	375.00
B. Additional Entry	60.00
C. Re-entry	40.00
D. Registration for News Agents	40.00
Parcel Select Mailing Fee (per year)	150.00
Bound Printed Matter: Destination Entry Mailing Fee (per year)	150.00
Media Mail Presorted Mailing Fee (per year)	150.00
Library Mail Presorted Mailing Fee (per year)	150.00
Authorization to Use Permit Imprint (one-time only)	150.00
Accounting Fee (per year)	475.00
Permit Fee (per year)	150.00

Attachment B to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes

[Docket No. R2001–1]

April 8, 2002.

Changes to the Domestic Mail Classification Schedule Amend the Domestic Mail Classification Schedule By Inserting Underlined Text and Deleting Bracketed Text as Follows:

Expedited Mail

Classification Schedule

110 Definition

Expedited Mail is mail matter entered as Express Mail under the provisions of this Schedule. Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail. Insurance is either included in Express Mail postage or is available for an additional charge, depending on the value and nature of the item sent by Express Mail.

120 Description of Services

121 Same Day Airport Service

Same Day Airport service is available between designated airport mail facilities.

122 Custom Designed Service

122.1 General

Custom Designed service is available between designated postal facilities or other designated locations for mailable matter tendered under a service agreement between the Postal Service

and the mailer. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. 403(c).

122.2 Service Agreement

A service agreement shall set forth the following:

- a. The scheduled place for each shipment tendered for service to each specific destination;
- b. Scheduled place for claim, or delivery, at destination for each scheduled shipment;
- c. Scheduled time of day for tender at origin and for claim or delivery at destination.

122.3 Pickup and Delivery

Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as specified by the Postal Service.

122.4 Commencement of Service Agreement

Service provided pursuant to a service agreement shall commence not more than 10 days after the signed service agreement is tendered to the Postal Service.

122.5 Termination of Service Agreement

122.51 Termination by Postal Service

Express Mail service provided pursuant to a service agreement may be terminated by the Postal Service upon 10 days prior written notice to the mailer if:

- a. Service cannot be provided for reasons beyond the control of the Postal

Service or because of changes in Postal Service facilities or operations, or

- b. The mailer fails to adhere to the terms of the service agreement or this schedule.

122.52 Termination by Mailers

The mailer may terminate a service agreement, for any reason, by notice to the Postal Service.

123 Next Day Service and Second Day Service

123.1 Availability of Services

Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for second day delivery.

123.2 Pickup Service

Pickup service is available for Next Day and Second Day Services under terms and conditions as specified by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

130 Physical Limitations

Express Mail may not exceed 70 pounds or 108 inches in length and girth combined.

140 Postage and Preparation

Except as provided in Rate Schedules 121, 122 and 123, postage on Express Mail is charged on each piece. For shipments tendered in Express Mail

pouches under a service agreement, each pouch is a piece.

150 Deposit and Delivery

151 Deposit

Express Mail must be deposited at places designated by the Postal Service.

152 Receipt

A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Express Mail by the Postal Service. This receipt serves as evidence of mailing.

153 Service

Express Mail service provides a high speed, high reliability service. Same Day Airport Express Mail will be dispatched on the next available transportation to the destination airport mail facility. Custom Designed Express Mail will be available for claim or delivery as specified in the service agreement.

154 Forwarding and Return

When Express Mail is returned, or forwarded, as specified by the Postal Service, there will be no additional charge.

160 Ancillary Services

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Schedule
a. Address correction	911
b. Return receipts	945
c. COD	944
d. Express Mail Insurance	943
e. Netpost Mailing Online	981

170 Rates and Fees

The rates for Express Mail are set forth in the following rate schedules:

	Schedule
a. Same Day Airport	121
b. Custom Designed	122
c. Next Day Post Office-to-Post Office	123
d. Second Day Post Office-to-Post Office	123
e. Next Day Post Office-to-Addressee	123
f. Second Day Post Office-to-Addressee	123

180 Refunds

181 Procedure

Claims for refunds of postage must be filed within the period of time and under terms and conditions specified by the Postal Service.

182 Availability

182.1 Same Day Airport

Except as provided in 182.5,[T]he Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified[, unless the delay is caused by:

- a. Strikes or work stoppage;
- b. Delay or cancellation of flights; or
- c. Governmental action beyond the control of Postal Service or air carriers.]

182.2 Custom Designed

Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, *except as provided in 182.5.*[unless the item was delayed by strike or work stoppage.]

182.3 Next Day

[Unless the item was delayed by strike or work stoppage,]*Except as provided in 182.5,* the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

- a. By 10:00 a.m., or earlier time(s) specified by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;
- b. By 3:00 p.m., or earlier time(s) specified by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

182.4 Second Day

[Unless the item was delayed by strike or work stoppage,]*Except as provided in 182.5,* the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

- a. By 10:00 a.m., or earlier time(s) specified by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;
- b. By 3:00 p.m., or earlier time(s) specified by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

182.5 Limitations

182.51

Refunds may not be available if delivery was attempted within the times required for the specific service, or if the delay was caused by:

- a. Proper detention for law enforcement purposes;
- b. Strike or work stoppage;
- c. Late deposit of shipment, forwarding, return, incorrect address, or incorrect ZIP code;
- d. Delay or cancellation of flights;

e. Governmental action beyond the control of the Postal Service or air carriers;

f. War, insurrection, or civil disturbance;

g. Breakdowns of a substantial portion of the USPS transportation network resulting from events or factors outside the control of the Postal Service; or

h. Acts of God.

First-Class Mail

Classification Schedule

210 Definition

Any matter eligible for mailing may, at the option of the mailer, be mailed as First-Class Mail. The following must be mailed as First-Class Mail, unless mailed as Express Mail or exempt under title 39, United States Code, or except as authorized under sections 344.12, 344.23 and 443:

- a. Mail sealed against postal inspection as set forth in section 5000;
- b. Matter wholly or partially in handwriting or typewriting except as specifically permitted by sections 312, 313, 520, 544.2, and 446;
- c. Matter having the character of actual and personal correspondence except as specifically permitted by sections 312, 313, 520, 544.2, and 446; and
- d. Bills and statements of account.

220 Description of Subclasses

221 Letters and Sealed Parcels Subclass

221.1 General

The Letters and Sealed Parcels subclass consists of First-Class Mail weighing 13 ounces or less that is not mailed under section 222 or 223.

221.2 Regular Rate Categories

The regular rate categories consist of Letters and Sealed Parcels subclass mail not mailed under section 221.3.

221.21 Single-Piece Rate Category

The single-piece rate category applies to regular rate Letters and Sealed Parcels subclass mail not mailed under section 221.22 or 221.24.

221.22 Presort Rate Category

The presort rate category applies to Letters and Sealed Parcels subclass mail that:

- a. Is prepared in a mailing of at least 500 pieces;
- b. Is presorted, marked, and presented as specified by the Postal Service; and
- c. Meets the addressing and other preparation requirements specified by the Postal Service.

221.23 Reserved

221.24 Qualified Business Reply Mail Rate Category

The qualified business reply mail rate category applies to Letters and Sealed Parcels subclass mail that:

- a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;
- b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including "correction" digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and
- c. Meets the letter machinability and other preparation requirements specified by the Postal Service.

221.25 Reserved

221.26 [Nonstandard Size] Nonmachinable Surcharge

Regular rate category Letters and Sealed Parcels subclass mail is subject to a surcharge if it is [nonstandard size]nonmachinable mail, as defined in section 232.

221.27 Presort Discount for Pieces Weighing More Than Two Ounces

Presort rate category Letters and Sealed Parcels subclass mail is eligible for an additional presort discount on each piece weighing more than two ounces.

221.3 Automation Rate Categories—Letters and Flats

221.31 General

The automation rate categories consist of Letters and Sealed Parcels subclass mail weighing 13 ounces or less that:

- a. Is prepared in a mailing of at least 500 pieces, or is provided for entry as mail using *Netpost* Mailing Online or a functionally equivalent service, pursuant to section 981;
- b. Is presorted, marked, and presented as specified by the Postal Service;
- c. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service; and
- d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

221.32 Letter Categories

221.321 [Basic]Mixed AADC Rate Category

The [basic]Mixed AADC rate category applies to letter-size automation rate category mail not mailed under section 221.322, 221.323, [or] 221.324, or 221.325.

221.322 AADC Rate Category

The AADC rate category applies to letter-size automation rate category mail presorted to automated area distribution center destinations as specified by the Postal Service.

221.32[2]3 Three-Digit Rate Category

The three-digit rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

221.32[3]4 Five-Digit Rate Category

The five-digit rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

221.32[4]5 Carrier Route Rate Category

The carrier route rate category applies to letter-size automation rate category mail presorted to carrier routes. It is available only for those carrier routes specified by the Postal Service.

221.33 Flats Categories

221.331 [Basic]Mixed ADC Flats Rate Category

The [basic]Mixed ADC flats rate category applies to flat-size automation rate category mail not mailed under section 221.332[or], 221.333, or 221.334.

221.332 ADC Flats Rate Category

The ADC flats rate category applies to flat-size automation rate category mail presorted to area distribution center destinations as specified by the Postal Service.

221.33[2]3 Three-Digit Flats Rate Category

The three-digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

221.33[3]4 Five-Digit Flats Rate Category

The five-digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

221.33[4]5 [Nonstandard Size]Nonmachinable Surcharge

Flat-size automation rate category pieces are subject to a surcharge if they are [nonstandard size]nonmachinable mail, as defined in section 232.

221.34 Presort Discount for Pieces Weighing More Than Two Ounces

Presorted automation rate category mail is eligible for an additional presort discount on each piece weighing more than two ounces.

222 Cards Subclass

222.1 Definition

222.11 Cards

The Cards subclass consists of Stamped Cards, defined in section 962.1, and postcards. A postcard is a privately printed mailing card for the transmission of messages. To be eligible to be mailed as a First-Class Mail postcard, a card must be of uniform thickness, *prepared as specified by the Postal Service*, and must not exceed any of the following dimensions:

- a. 6 inches in length;
- b. 4¼ inches in width;
- c. 0.016 inch in thickness.

222.12 Double Cards

Double Stamped Cards or double postcards may be mailed as Stamped Cards or postcards. Double Stamped Cards are defined in section 962.1. A double postcard consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postcard.

222.2 Reserved[Restriction]

A mailpiece with any of the following characteristics is not mailable as a Stamped Card or postcard unless it is prepared as specified by the Postal Service:

- a. Numbers or letters unrelated to postal purposes appearing in the address portion of the card;
- b. Punched holes;
- c. Vertical tearing guide;
- d. An address portion which is smaller than the remainder of the card.]

222.3 Regular Rate Categories

222.31 Single-Piece Rate Category

The single-piece rate category applies to regular rate Cards subclass mail not mailed under section 222.32 or 222.34.

222.32 Presort Rate Category

The presort rate category applies to Cards subclass mail that:

- a. Is prepared in a mailing of at least 500 pieces;
- b. Is presorted, marked, and presented as specified by the Postal Service; and
- c. Meets the addressing and other preparation requirements specified by the Postal Service.

222.33 Reserved**222.34 Qualified Business Reply Mail Rate Category**

The qualified business reply mail rate category applies to Cards subclass mail that:

- a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;
- b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including "correction" digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and
- c. Meets the card machinability and other preparation requirements specified by the Postal Service.

222.4 Automation Rate Categories**222.41 General**

The automation rate categories consist of Cards subclass mail that:

- a. Is prepared in a mailing of at least 500 pieces, or is provided for entry as mail using *Netpost* Mailing Online or a functionally equivalent service, pursuant to section 981;
- b. Is presorted, marked, and presented as specified by the Postal Service;
- c. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service; and
- d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

222.42 [Basic]Mixed AADC Rate Category

The [basic]Mixed AADC rate category applies to automation rate category cards not mailed under section 222.43, 222.44, [or] 222.45, or 222.46.

222.43 AADC Rate Category

The AADC rate category applies to automation rate category cards presorted to automated area distribution center destinations as specified by the Postal Service.

222.4[3]4 Three-Digit Rate Category

The three-digit rate category applies to automation rate category cards presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

222.4[4]5 Five-Digit Rate Category

The five-digit rate category applies to automation rate category cards presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

222.4[5]6 Carrier Route Rate Category

The carrier route rate category applies to automation rate category cards presorted to carrier routes. It is available only for those carrier routes specified by the Postal Service.

223 Priority Mail Subclass**223.1 General**

The Priority Mail subclass consists of:

- a. First-Class Mail weighing more than 13 ounces; and

- b. Any mailable matter which, at the option of the mailer, is mailed for expeditious mailing and transportation.

223.2 Single-Piece Priority Mail Rate Category

The single-piece Priority Mail rate category applies to Priority Mail subclass mail not mailed under section 223.3.

223.3 Presorted Priority Mail Rate Categories**223.31 General**

The presorted Priority Mail rate categories apply to Priority Mail subclass mail that:

- a. Is prepared in a mailing of at least 300 pieces or at least 500 pounds;
- b. Is presorted, marked, and presented as specified by the Postal Service; and
- c. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

223.32 ADC Rate Category

The ADC rate category applies to Priority Mail presorted to single or multiple Area Distribution Center destinations as specified by the Postal Service.

223.33 Three-Digit Rate Category

The three-digit rate category applies to Priority Mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

223.34 Five-Digit Rate Category

The five-digit rate category applies to Priority Mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

223.35 Duration of Experimental Service Period

The provisions of section 223 expire the later of:

- a. Two years after the implementation date specified [sic] by the Board of Governors, or
- b. If, by the expiration date specified above, a request for the establishment of

permanent presorted Priority Mail classifications or rates is pending before the Postal Rate Commission, the later of:

- (1) *three months after the Commission takes action on such request under 39 U.S.C. § 3624 or, if applicable[.],*
- (2) *on the implementation date for permanent presorted Priority Mail classifications or fees.*

223.4 Reserved**223.5 Flat Rate Envelope**

Priority Mail subclass mail sent in a "flat rate" envelope provided by the Postal Service is charged the [two] one-pound rate.

223.6 Pickup Service

Pickup service is available for Priority Mail subclass mail under terms and conditions specified by the Postal Service.

223.7 Bulk[y] Parcels

Priority Mail subclass mail weighing less than 15 pounds, and measuring over 84 inches in length and girth combined, is charged a minimum rate equal to that for a 15-pound parcel for the zone to which the piece is addressed.

230 Physical Limitations**231 Size and Weight**

First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined. Additional size and weight limitations apply to individual First-Class Mail subclasses.

232 [Nonstandard Size] Nonmachinable Mail

Letters and Sealed Parcels subclass mail weighing one ounce or less is [nonstandard size] *nonmachinable* if:

- a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive; [or]
- b. It exceeds any of the following dimensions:
 - i. 11.5 inches in length;
 - ii. 6.125 inches in width; or
 - iii. 0.25 inch in thickness[.]; or
- c. *For letter-sized pieces:*
 - i. *it does not meet the machinability requirements of the Postal Service; or*
 - ii. *manual processing is requested.*

240 Postage and Preparation

Postage on First-Class Mail must be paid as set forth in section 3000. Postage is computed separately on each piece of mail. Pieces not within the same postage rate increment may be mailed at other than a single-piece rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage

are followed. All mail mailed at other than a single-piece rate must have postage paid in a manner not requiring cancellation.

250 Deposit and Delivery

251 Deposit

First-Class Mail must be deposited at places and times designated by the Postal Service.

252 Service

First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

253 Forwarding and Return

First-Class Mail that is undeliverable-as-addressed is forwarded or returned to the sender without additional charge.

260 Ancillary Services

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Schedule
a. Address Correction	911
b. Business Reply Mail	931
c. Certificates of Mailing	947
d. Certified Mail	941
e. COD	944
f. Insurance	943
g. Registered Mail	942
h. Return Receipt (limited to merchandise sent by Priority Mail	945
i. Merchandise Return	932
j. Delivery Confirmation (limited to <i>parcel-shaped Letters and Sealed Parcels and Priority Mail</i>)	948
k. [Reserved] <i>Signature Confirmation (limited to parcel-shaped Letters and Sealed Parcels and Priority Mail)</i>	949
l. Netpost Mailing Online	981

270 Rates and Fees

271 First-Class Mail

The rates and fees for First-Class Mail are set forth in the following rate schedules:

	Schedule
a. Letters and Sealed Parcels ..	221
b. Cards	222
c. Priority Mail	223

272 Keys and Identification Devices

Keys, identification cards, identification tags, or similar identification devices that:

- weigh no more than 2 pounds;
- are mailed without cover; and

c. bear, contain, or have securely attached the name and address information, as specified by the Postal Service, of a person, organization, or concern, with instructions to return to the address and a statement guaranteeing the payment of postage due on delivery; are subject to the following rates and fees:

- the applicable single-piece rates in schedules 221 or 223;
- the fee set forth in fee schedule 931 for payment of postage due charges if an active business reply mail advance deposit account is not used, and
- if applicable, the surcharge for [nonstandard size]*nonmachinable* mail, as defined in section 232.

280 Authorizations and Licenses

The mailing fee set forth in schedule 1000 must be paid once each year at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of other than single-piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate.

Standard Mail

Classification Schedule

310 Definition

311 General

Anyailable matter weighing less than 16 ounces may be mailed as Standard Mail except:

- Matter required to be mailed as First-Class Mail;
- Copies of a publication that is entered as Periodicals class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)

312 Printed Matter

Printed matter, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual [or] *and* personal correspondence, may be mailed as Standard Mail. Printed matter does not lose its character as Standard Mail when the date and name of the addressee and of the sender are written thereon. For the purposes of the Standard Mail Classification Schedule, "printed" does not include reproduction by handwriting or typewriting.

313 Written Additions

Standard Mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

- Marks, numbers, name, or letters descriptive of contents;
- "Please Do Not Open Until Christmas," or words of similar import;
- Instructions and directions for the use of an article in the package;
- Manuscript dedication or inscription not in the nature of personal correspondence;
- Marks to call attention to any word or passage in text;
- Corrections of typographical errors in printed matter;
- Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;
- Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;
- An invoice.

320 Description of Subclasses

321 Regular Subclass

321.1 General

The Regular subclass consists of Standard Mail that is not mailed under sections 322, 323, or 324.

321.2 Presort Rate Categories

321.21 General

The presort rate categories apply to Regular subclass mail that:

- Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;
- Is presorted, marked, and presented as specified by the Postal Service; and
- Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

321.22 Basic Rate Categories

The basic rate categories apply to presort rate category mail not mailed under section 321.23.

321.23 Three- and Five-Digit Rate Categories

The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

321.3 Automation Rate Categories

321.31 General

The automation rate categories apply to Regular subclass mail that:

- a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces, or is provided for entry as mail using *Netpost* Mailing Online or a functionally Innequivalent service, pursuant to section 981;
- b. Is presorted, marked, and presented as specified by the Postal Service;
- c. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service;
- d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

321.32 [Basic Barcoded]Mixed AADC Rate Category

The [basic barcoded]Mixed AADC rate category applies to letter-size automation rate category mail not mailed under section 321.33, [or] 321.34, or 321.35.

321.33 AADC Rate Category

The AADC rate category applies to letter-size automation rate category mail presorted to automated area distribution center destinations as specified by the Postal Service.

321.34[3] Three-Digit Barcoded Rate Category

The three-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

321.35[4] Five-Digit Barcoded Rate Category

The five-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

321.36[5] Basic Barcoded Flats Rate Category

The basic barcoded flats rate category applies to flat-size automation rate category mail not mailed under section 321.37[6].

321.37[6] Three- and Five-Digit Barcoded Flats Rate Category

The three- and five-digit barcoded flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

321.4 Destination Entry Discounts

The destination entry discounts apply to Regular subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), or sectional center facility (SCF), at which it is entered, as defined by the Postal Service.

321.5 Residual Shape Surcharge

Regular subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

321.6 Barcode Discount

The barcode discount applies to Regular Subclass mail that is subject to the residual shape surcharge in 321.5, is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

321.7 Nonmachinable Surcharge

The nonmachinable surcharge applies to Regular presort category letter-sized pieces (i) that do not meet the machinability requirements specified by the Postal Service; or (ii) for which manual processing is requested.

322 Enhanced Carrier Route Subclass

322.1 Definition

The Enhanced Carrier Route subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section 321, 323, or 324, and that:

- a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;
- b. Is prepared, marked, and presented as specified by the Postal Service;
- c. Is presorted to carrier routes as specified by the Postal Service;
- d. Is sequenced as specified by the Postal Service;[and]
- e. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service; and[.]

f. For high-density and saturation category letters, bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service.

322.2 Basic Rate Category

The basic rate category applies to Enhanced Carrier Route subclass mail not mailed under section 322.3, 322.4 or 322.5.

322.3 Basic Pre-Barcoded Rate Category

The basic pre-barcoded rate category applies to letter-size Enhanced Carrier

Route subclass mail which bears a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

322.4 High Density Rate Category

The high density rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements specified by the Postal Service. *High density rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.*

322.5 Saturation Rate Category

The saturation rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements specified by the Postal Service. *Saturation rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.*

322.6 Destination Entry Discounts

Destination entry discounts apply to Enhanced Carrier Route subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

322.7 Residual Shape Surcharge

Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

323 Nonprofit Subclass

323.1 General

The Nonprofit subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section 321, 322, or 324, and that is mailed by authorized nonprofit organizations or associations of the following types:

- a. Religious, as defined in section 1009,
- b. Educational, as defined in section 1009,

- c. Scientific, as defined in section 1009,
- d. Philanthropic, as defined in section 1009,
- e. Agricultural, as defined in section 1009,
- f. Labor, as defined in section 1009,
- g. Veterans', as defined in section 1009,
- h. Fraternal, as defined in section 1009,
- i. Qualified political committees,
- j. State or local voting registration officials when making a mailing required or authorized by the National Voter Registration Act of 1993.

323.11 Qualified Political Committees

The term "qualified political committee" means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee:

- a. The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and
- b. The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

323.12 Limitation on Authorization

An organization authorized to mail at the nonprofit Standard rates for qualified nonprofit organizations may mail only its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at nonprofit Standard rates to any other person, organization or association.

323.2 Presort Rate Categories

323.21 General

The presort rate categories apply to Nonprofit subclass mail that:

- a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;
- b. Is presorted, marked, and presented as specified by the Postal Service; and
- c. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

323.22 Basic Rate Categories

The basic rate categories apply to presort rate category mail not mailed under section 322.23.

323.23 Three- and Five-Digit Rate Categories

The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

323.3 Automation Rate Categories

323.31 General

The automation rate categories apply to Nonprofit subclass mail that:

- a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces, or is provided for entry as mail using *Netpost* Mailing Online or a functionally equivalent service, pursuant to section 981;
- b. Is presorted, marked, and presented as specified by the Postal Service;
- c. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service;
- d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

323.32 [Basic Barcoded] *Mixed AADC* Rate Category

The [basic barcoded]*Mixed AADC* rate category applies to letter-size automation rate category mail not mailed under section 323.33,[or] 323.34, or 323.35.

323.33 AADC Rate Category

The AADC rate category applies to letter-size automation rate category mail presorted to automated area distribution center destinations as specified by the Postal Service.

323.34[3] Three-Digit Barcoded Rate Category

The three-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

323.35[4] Five-Digit Barcoded Rate Category

The five-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

323.36[5] Basic Barcoded Flats Rate Category

The basic barcoded flats rate category applies to flat-size automation rate category mail not mailed under section 323.37[6].

323.36 Three- and Five-Digit Barcoded Flats Rate Category

The three- and five-digit barcoded flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

323.4 Destination Entry Discounts

Destination entry discounts apply to Nonprofit subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility) or sectional center facility (SCF) at which it is entered, as defined by the Postal Service.

323.5 Residual Shape Surcharge

Nonprofit subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

323.6 Barcode Discount

The barcode discount applies to Nonprofit subclass mail that is subject to the residual shape surcharge in 323.5, is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service and meets all other preparation and machinability requirements of the Postal Service.

323.7 Nonmachinable Surcharge

The nonmachinable surcharge applies to Nonprofit presort category letter-sized pieces (i) that do not meet the machinability requirements specified by the Postal Service; or (ii) for which manual processing is requested.

324 Nonprofit Enhanced Carrier Route Subclass

324.1 Definition

The Nonprofit Enhanced Carrier Route subclass consists of Standard Mail [weighing less than 16 ounces] that is not mailed under section 321, 322, or 323, that is mailed by authorized nonprofit organizations or associations (as defined in section 323) under the terms and limitations stated in section 323.12, and that:

- a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;
- b. Is prepared, marked, and presented as specified by the Postal Service;
- c. Is presorted to carrier routes as specified by the Postal Service;
- d. Is sequenced as specified by the Postal Service;[and]
- e. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service; and[.]

f. For high-density and saturation letters, bears a barcode representing not more than 11 digits (not including "correction: digits") as specified by the Postal Service.

324.2 Basic Rate Category

The basic rate category applies to Nonprofit Enhanced Carrier Route subclass mail not mailed under section 324.3, 324.4, or 324.5.

324.3 Basic Pre-Barcoded Rate Category

The basic pre-barcoded rate category applies to letter-size Nonprofit Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

324.4 High Density Rate Category

The high density rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements specified by the Postal Service. *High density rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.*

324.5 Saturation Rate Category

The saturation rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements specified by the Postal Service. *Saturation rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.*

324.6 Destination Entry Discounts

Destination entry discounts apply to Nonprofit Enhanced Carrier Route subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

324.7 Residual Shape Surcharge

Nonprofit Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

330 Physical Limitations

331 Size

Standard Mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual rate categories. The maximum size for mail in the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness, except that merchandise samples mailed with detached address cards, prepared as specified by the Postal Service, may exceed those dimensions.

332 Weight

Standard Mail may not weigh more than 16 ounces.

340 Postage and Preparation

341 Postage

Postage must be paid as set forth in section 3000. When the postage is higher than the rate prescribed in any of the Package Services subclasses for which the piece also qualifies, the piece is eligible for the applicable lower rate. All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

342 Preparation

All pieces in a Standard mailing must be separately addressed. All pieces in a Standard mailing must be identified as specified by the Postal Service, and must contain the ZIP Code of the addressee when specified by the Postal Service. All Standard mailings must be prepared and presented as specified by the Postal Service. Two or more Standard mailings may be commingled and mailed only when specific methods approved by the Postal Service for determining and verifying postage are followed.

343 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed.

344 Attachments and Enclosures

344.1 General

First-Class Mail may be attached to or enclosed in Standard Mail [containing books, catalogs, and merchandise]. The

piece must be marked as specified by the Postal Service. Except as provided in section 344.2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class rate for which it qualifies.

344.2 Incidental First-Class Attachments and Enclosures

First-Class Mail, as defined in subsections b through d of section 210, may be attached to or enclosed with Standard Mail containing merchandise, including books, but excluding merchandise samples, with postage paid on the combined piece at the applicable Standard rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

350 Deposit and Delivery

351 Deposit

Standard Mail must be deposited at places and times designated by the Postal Service.

352 Service

Standard Mail may receive deferred service.

353 Forwarding and Return

Undeliverable-as-addressed Standard Mail will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and Standard Mail pieces will be returned as specified by the Postal Service. Except as provided in section 935, the applicable First-Class Mail rate is charged for each piece receiving return only service. Except as provided in section 936, charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. Except as provided in sections 935 and 936, the charge for those returned pieces is the appropriate First-Class Mail rate for the piece plus that rate multiplied by a factor equal to the number of Standard Mail pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

360 Ancillary Services

361 All Subclasses

All Standard Mail will receive the following services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	911

Service	Schedule
b. Certificates of mailing indicating that a specified number of pieces have been mailed	947

Certificates of mailing are not available for Standard Mail when postage is paid with permit imprint.

362 Regular and Nonprofit

362.1

Regular and Nonprofit subclass mail will receive the following additional services upon payment of the appropriate fees.

Service	Schedule
a. Bulk Parcel Return Service ..	935
b. Shipper-Paid Forwarding	936

362.2

Regular and Nonprofit subclass mail subject to the residual shape surcharge in 321.5 and 323.6, respectively, will receive the following additional services upon payment of the [appropriate]appropriate fees.

Service	Schedule
a. Bulk Insurance	943
b. Return Receipt (merchandise only)	945
c. Delivery Confirmation	948

Bulk insurance may not be used selectively for individual pieces in a multi-piece Standard Mail mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

363 Regular

Regular subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Netpost Mailing Online	981

365 Nonprofit

Nonprofit subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Netpost Mailing Online (starting on a date to be specified by the Postal Service)	981

370 Rates and Fees

The rates and fees for Standard Mail are set forth as follows:

	Schedule
a. Regular subclass.	
Presort category	321A
Automation category	321B
b. Enhanced Carrier Route subclass	322
c. Nonprofit subclass.	
Presort category	323A
Automation category	323B
d. Nonprofit Enhanced Carrier Route subclass	324
e. Fees	1000

380 Authorizations and Licenses

The mailing fee set forth in Schedule 1000 must be paid once each year at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of Standard Mail. Payment of the fee allows the mailer to mail at any Standard Mail rate.

Periodicals

Classification Schedule

410 Definition

411 General Requirements

411.1 Definition

A publication may qualify for mailing under the Periodicals Classification Schedule if it meets all the requirements in sections 411.2 through 411.5 and the requirements for one of the qualification categories in sections 412 through 415. Eligibility for specific Periodicals rates is prescribed in section 420.

411.2 Periodicals

Periodicals class mail is mailable matter consisting of newspapers and other periodical publications. The term "periodical publications" includes, but is not limited to:

a. Any catalog or other course listing including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education.

b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

411.3 Issuance

411.31 Regular Issuance

Periodicals class mail must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively.

411.32 Separate Publication

For purposes of determining Periodicals rate eligibility, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication, and

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. "During the same period" shall be defined as the periods of time ensuing between the distribution of each of the issues whose eligibility is being examined. Such separate publications must independently meet the qualifications for Periodicals eligibility.

411.4 Office of Publication

Periodicals class mail must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original entry.

411.5 Printed Sheets

Periodicals class mail must be formed of printed sheets. It may not be reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.

412 General Publications

412.1 Definition

To qualify as a General Publication, Periodicals class mail must meet the requirements in section 411 and in sections 412.2 through 412.4.

412.2 Dissemination of Information

A General Publication must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry.

412.3 Paid Circulation**412.31 Total Distribution**

A General Publication must be designed primarily for paid circulation. At least 50 percent or more of the copies of the publication must be distributed to persons who have paid above a nominal rate.

412.32 List of Subscribers

A General Publication must be distributed to a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time. Copies mailed to persons who are not on a legitimate list of subscribers are nonsubscriber copies.

412.33 Nominal Rates

As used in section 412.31, nominal rate means:

a. A token subscription price that is so low that it cannot be considered a material consideration;

b. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recognized retail value, or the represented value, whichever is highest.

412.34 Nonsubscriber Copies**412.341 Up to Ten Percent**

Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to subscribers during the calendar year are mailable at the rates that apply to subscriber copies provided that the nonsubscriber copies would have been eligible for those rates if mailed to subscribers.

412.342 Over Ten Percent

Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers during the calendar year which are presorted and commingled with subscriber copies are charged the applicable rates for Outside County Periodicals, but are not eligible for preferred rate discounts. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to subscribers during the calendar year.

412.35 Advertiser's Proof Copies

One complete copy of each issue of a General Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to subscriber copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as subscriber copies.

412.36 Expired Subscriptions

For six months after a subscription has expired, copies of a General Publication may be mailed to a former subscriber at the rates that apply to copies mailed to subscribers, if the publisher has attempted during that six months to obtain payment, or a promise to pay, for renewal. These copies do not count as subscriber copies.

412.4 Advertising Purposes

A General Publication may not be designed primarily for advertising purposes. A publication is "designed primarily for advertising purposes" if it:

a. Has advertising in excess of 75 percent in more than one-half of its issues during any 12-month period;

b. Is owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it;

c. Consists principally of advertising and editorial write-ups of the advertisers;

d. Consists principally of advertising and has only a token list of subscribers, the circulation being mainly free;

e. Has only a token list of subscribers and prints advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers; or

f. Is published under a license from individuals or institutions and features other businesses of the licensor.

413 Requester Publications**413.1 Definition**

A publication which is circulated free or mainly free may qualify for Periodicals class as a Requester Publication if it meets the requirements in sections 411, and 413.2 through 413.4.

413.2 Minimum Pages

It must contain at least 24 pages.

413.3 Advertising Purposes**413.31 Advertising Percentage**

It must devote at least 25 percent of its pages to nonadvertising and not more than 75 percent to advertisements.

413.32 Ownership and Control

It must not be owned or controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it.

413.4 Circulated to Requesters**413.41 List of Requesters**

It must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for, including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration.

413.42 Nonrequester Copies**413.421 Up to Ten Percent**

Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to requesters during the calendar year are mailable at the rates that apply to requester copies provided that the nonrequester copies would have been eligible for those rates if mailed to requesters.

413.422 Over Ten Percent

Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to requesters during the calendar year which are presorted and commingled with requester copies are charged the applicable rates for Outside County Periodicals, but are not eligible for preferred rate discounts. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to requesters during the calendar year.

413.43 Advertiser's Proof Copies

One complete copy of each issue of a Requester Publication may be mailed to

each advertiser in that issue as an advertiser's proof copy at the rates that apply to requester copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as requester copies.

414 Publications of Institutions and Societies

414.1 Publisher's Own Advertising

Except as provided in section 414.2, a publication which meets the requirements of sections 411 and 412.4, and which contains no advertising other than that of the publisher, qualifies for Periodicals class as a publication of an institution or society if it is:

- a. Published by a regularly incorporated institution of learning;
- b. Published by a regularly established state institution of learning supported in whole or in part by public taxation;
- c. A bulletin issued by a state board of health or a state industrial development agency;
- d. A bulletin issued by a state conservation or fish and game agency or department;
- e. A bulletin issued by a state board or department of public charities and corrections;
- f. Published by a public or nonprofit private elementary or secondary institution of learning or its administrative or governing body;
- g. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof, or by a nonprofit educational radio or television station;
- h. Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons;
- i. Published by or under the auspices of a trade(s) union;
- j. Published by a strictly professional, literary, historical, or scientific society; or,
- k. Published by a church or church organization.

414.2 General Advertising

A publication published by an institution or society identified in sections 414.1 h through k, may contain advertising of other persons, institutions, or concerns, if the following additional conditions are met:

- a. The publication is originated and published to further the objectives and purposes of the society;
- b. Circulation is limited to:
 - i. Copies mailed to members who pay either as a part of their dues or

assessment or otherwise, not less than 50 percent of the regular subscription price;

- ii. Other actual subscribers; and
- iii. Exchange copies.
- c. The circulation of nonsubscriber copies, including sample and complimentary copies, does not exceed 10 percent of the total number of copies referred to in 414.2b.

415 Publications of State Departments of Agriculture

A publication which is issued by a state department of agriculture and which meets the requirements of sections 411 qualifies for Periodicals class as a publication of a state department of agriculture if it contains no advertising and is published for the purpose of furthering the objects of the department.

416 Foreign Publications

Foreign newspapers and other periodicals of the same general character as domestic publications entered as Periodicals class mail may be accepted on application of the publishers thereof or their agents, for transmission through the mail at the same rates as if published in the United States. This section does not authorize the transmission through the mail of a publication which violates a copyright granted by the United States.

420 Description of Subclasses

421.1 Outside County Subclass

421.1 Definition

The Outside County subclass consists of Periodicals class mail that is not mailed under section 423 and that:

- a. Is presorted, marked, and presented as specified by the Postal Service; and
- b. Meets machinability, addressing, and other preparation requirements specified by the Postal Service.

421.2 Outside County Pound Rates

An unzoned pound rate applies to the nonadvertising portion of Outside County subclass mail. A zoned pound rate applies to the advertising portion and may be reduced by applicable destination entry discounts. The pound rate postage is the sum of the nonadvertising portion charge and the advertising portion charge.

421.3 Outside County Piece Rates

421.31 Basic Rate Category

The basic rate category applies to all Outside County subclass mail not mailed under section 421.32, 421.33, or 421.34.

421.32 Three-Digit [City and Five-Digit]Rate Category

The three-digit rate category applies to Outside County subclass mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

421.33 Five-Digit Rate Category

The five-digit rate category applies to Outside County subclass mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

421.34 Carrier Route Rate Category

The carrier route rate category applies to Outside County subclass mail presorted to carrier routes as specified by the Postal Service.

421.4 Outside County Subclass Discounts

421.41 Barcoded Letter Discounts

Barcoded letter discounts apply to letter size Outside County subclass mail mailed under sections 421.31, 421.32, and 421.33 which bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.42 Barcoded Flats Discounts

Barcoded flats discounts apply to flat size Outside County subclass mail mailed under sections 421.31, 421.32, and 421.33 which bear a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.43 High Density Discount

The high density discount applies to Outside County subclass mail mailed under section 421.34, presented in walk sequence order, and meeting the high density and preparation requirements specified by the Postal Service.

421.44 Saturation Discount

The saturation discount applies to Outside County subclass mail mailed under section 421.34, presented in walk-sequence order, and meeting the saturation and preparation requirements specified by the Postal Service.

421.45 Destination Entry Discounts

Destination entry discounts apply to Outside County subclass mail which is prepared as specified by the Postal

Service and addressed [destined] for delivery within the service area of the *destination area distribution center (ADC)*, destination sectional center facility (SCF) or the destination delivery unit (DDU) *at*[in] which it is entered, as defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.

421.46 Nonadvertising Discount

The nonadvertising discount applies to all Outside County subclass mail and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

421.47 Preferred Rate Discount

Periodicals Mail qualifying as Nonprofit or Classroom mail under sections 422.2 and 422.3 is eligible for the Preferred rate discount set forth in Rate Schedule 421.

421.48 Pallet Discount

The pallet discount applies to Outside County subclass nonletter mail that is presented on pallets and meets the preparation requirements specified by the Postal Service.

421.49 Dropship Pallet Discount

The dropship pallet discount applies to Outside County subclass nonletter mail under section 421.45, that is presented on pallets and meets the preparation requirements specified by the Postal Service.

422 Preferred Qualification Categories

422.1 Definition

Preferred Qualification Outside County Subclass Periodicals consist of Periodicals Mail, other than publications qualifying as Requester Publications, that meets applicable requirements in sections 422.2, 422.3, or 422.4.

422.2 Nonprofit

The Periodicals Outside County Subclass Nonprofit category consists of publications entered by authorized nonprofit organizations or associations of the following types:

- a. Religious, as defined in section 1009,
- b. Educational, as defined in section 1009,
- c. Scientific, as defined in section 1009,
- d. Philanthropic, as defined in section 1009,
- e. Agricultural, as defined in section 1009,
- f. Labor, as defined in section 1009,

g. Veterans', as defined in section 1009,

h. Fraternal, as defined in section 1009, and

i. Associations of rural electric cooperatives, and the publications of the following types:

j. one publication, which contains no advertising (except advertising of the publisher) published by the official highway or development agency of a state,

k. program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station, or

l. one conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.

422.3 Classroom

The Periodicals Outside County Subclass Classroom rate category consists of religious, educational, or scientific publications designed specifically for use in school classrooms or religious instruction classes.

422.4 Science of Agriculture

422.41 Definition

Science of Agriculture mail consists of Periodicals class mail devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.

422.42 Rates

Science of Agriculture mail is subject to pound rates, piece rates, and piece rate discounts (except for the discount set forth in section 421.47) for Outside County Subclass Periodicals Mail, except for DDU, DSCF and Zone 1 & 2 pound rates. Rates for Science of Agriculture are set forth in Rate Schedule 421.

422.43 Nonadvertising Discount

The nonadvertising discount for Outside County Subclass Periodicals Mail applies to Science of Agriculture Periodicals, and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

422.44 Destination Entry Discounts

Destination entry discounts apply to Science of Agriculture Periodicals *mail*

which is prepared as specified by the Postal Service, and addressed [which are destined] for delivery within the service area of the *destination area distribution center (ADC)*, destination sectional center facility (SCF) or the destination delivery unit (DDU) [in]at which it is entered, as defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.

423 Within County Subclass

423.1 Reserved

423.2 General

423.21 Definition

Within County mail consists of Periodicals class mail, other than publications qualifying as Requester Publications, mailed in, and addressed for delivery within, the county where published and originally entered, from either the office of original entry or additional entry. In addition, a Within County publication must meet one of the following conditions:

- a. The total paid circulation of the issue is less than 10,000 copies; or
- b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half the total paid circulation of such issue.

423.22 Entry in an Incorporated City

For the purpose of determining eligibility for Within County mail, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

423.23 Pound Rate

One pound rate applies to Within County pieces presorted to carrier routes to be delivered within the delivery area of the originating post office, and another pound rate applies to all other pieces.

423.3 Within County Piece Rates

423.31 Basic Rate Category

The basic rate category applies to Within County Periodicals not mailed under section 423.32, 423.33, or 423.34.

423.32 Three-[d]Digit Rate Category

The three-digit rate category applies to Within County Periodicals that are presorted to single or multiple three-

digit ZIP Code destinations as specified by the Postal Service.

423.33 Five-Digit Rate Category

The five-digit rate category applies to Within County Periodicals presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

423.34 Carrier Route Rate Category

The carrier route rate category applies to Within County Periodicals presorted to carrier routes as specified by the Postal Service.

423.4 Within County Discounts

423.41 Barcoded Letter Discounts

Barcoded letter discounts apply to letter size Within County Periodicals mailed under sections 423.31, 423.32, and 423.33 which bear a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

423.42 Barcoded Flats Discounts

Barcoded flats discounts apply to flat size Within County Periodicals mailed under sections 423.31, 423.32, and 423.33 which bear a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

423.43 High Density Discount

The high density discount applies to Within County Periodicals mailed under section 423.34, presented in walk sequence order, and meeting the high density and preparation requirements specified by the Postal Service. Alternatively, Within County mail may qualify for such discount also by presenting otherwise eligible mailings containing pieces addressed to a minimum of 25 percent of the addresses per carrier route.

423.44 Saturation Discount

The saturation discount applies to Within County Periodicals mailed under section 423.34, presented in walk sequence order, and meeting the saturation and preparation requirements specified by the Postal Service.

423.45 Destination Entry Discount

A destination delivery unit discount applies to Within County carrier route category mail which is destined for

delivery within the destination delivery unit (DDU) in which it is entered, as defined by the Postal Service.

430 Physical Limitations

Periodicals Mail may not weigh more than 70 pounds or exceed 108 inches in length and girth combined. Additional size limitations apply to individual Periodicals rate categories.

440 Postage and Preparation

441 Postage

Postage must be paid on Periodicals class mail as set forth in section 3000.

442 Presortation

Periodicals class mail must be presorted as specified by the Postal Service.

443 Attachments and Enclosures

443.1 General

First-Class Mail or Standard Mail may be attached to or enclosed with Periodicals class mail. The piece must be marked as specified by the Postal Service. Except as provided in section 443.2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the appropriate First-Class Mail, [or] Standard Mail, or *Package Services* rate for which it qualifies (unless the rate applicable to the host piece is higher), or, if a combined piece with a Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.

443.1a "Ride-Along" Attachments and Enclosures

A limit of one Standard Mail piece, not exceeding the weight of the host copy and weighing a maximum of 3.3 ounces, from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route) may be attached to or enclosed with an individual copy of Periodicals Mail for an additional postage payment of ten cents. Periodicals containing "Ride-Along" attachments or enclosures must maintain uniform thickness as specified by the Postal Service. The Periodicals piece with the "Ride-Along" must maintain the same shape and automation compatibility as it had before addition of the "Ride-Along" attachment or enclosure and meet other preparation requirements as specified by the Postal Service.

[This provision expires on the effective date to be set by the Board of

Governors for Rate Schedules 421 and 423 resulting from Docket No. R2001-1.]

443.2 Incidental First-Class Mail Attachments and Enclosures

First-Class Mail that meets one or more of the definitions in section 210 b through d may be attached to or enclosed with Periodicals class mail, with postage paid on the combined piece at the applicable Periodicals rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

444 Identification

Periodicals class mail must be identified as required by the Postal Service. Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

445 Filing of Information

Information relating to Periodicals class mail must be filed with the Postal Service under 39 U.S.C. 3685.

446 Enclosures and Supplements

Periodicals class mail may contain enclosures and supplements as specified by the Postal Service. An enclosure or supplement may not contain writing, printing or sign thereof or therein, in addition to the original print, except as authorized by the Postal Service, or as authorized under section 443.2.

450 Deposit and Delivery

451 Deposit

Periodicals class mail must be deposited at places and times designated by the Postal Service.

452 Service

Periodicals class mail is given expeditious handling insofar as is practicable.

453 Forwarding and Return

Undeliverable-as-addressed Periodicals class mail will be forwarded or returned to the mailer, as specified by the Postal Service. Undeliverable-as-addressed combined First-Class and Periodicals class mail pieces will be forwarded or returned, as specified by the Postal Service. Additional charges when Periodicals class mail is returned will be based on the applicable First-Class Mail rate.

470 Rates and Fees

The rates and fees for Periodicals class mail are set forth as follows:

	Schedule
a. Outside County	421
b. Within County	423
c. Science of Agriculture	421
d. Fees	1000

480 Authorizations and Licenses

481 Entry Authorizations

Prior to mailing at Periodicals rates, a publication must be authorized for entry as Periodicals class mail by the Postal Service. Each authorized publication will be granted one original entry authorization at the post office where the office of publication is maintained. An authorization for the establishment of an account to enter a publication at an additional entry office may be granted by the Postal Service upon application by the publisher. An application for re-entry must be made whenever the publisher proposes to change the publication's title, frequency of issue or office of original entry.

482 Nonprofit, Classroom and Science of Agriculture Authorization

Prior to entering Nonprofit, Classroom, and Science of Agriculture Periodicals Mail, a publication must obtain an additional Postal Service entry authorization to mail at those rates.

483 Mailing by Publishers and News Agents

Periodicals class mail may be mailed only by publishers or registered news agents. A news agent is a person or concern engaged in selling two or more Periodicals publications published by more than one publisher. News agents must register at all post offices at which they mail Periodicals class mail.

484 Fees

Fees for original entry, additional entry, re-entry, and registration of a news agent are set forth in Schedule 1000.

Package Services

Classification Schedule

510 Definition

511 General

Anyailable matter may be mailed as Package Services mail except:

a. Matter required to be mailed as First-Class Mail;

b. Copies of a publication that is entered as Periodicals class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class

mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)

512 Written Additions

Package Services mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

a. Marks, numbers, name, or letters descriptive of contents;

b. "Please Do Not Open Until Christmas," or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in printed matter;

g. Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;

h. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;

i. An invoice.

520 Description of Subclasses

521 Parcel Post Subclass

521.1 Definition

The Parcel Post subclass consists of Package Services mail that is not mailed under sections 522, 523, or 524.

521.2 Description of Rate Categories

521.21 Inter-BMC Rate Category

The inter-BMC rate category applies to all Parcel Post subclass mail not mailed under sections 521.22, 521.23, 521.24, [or]521.25, or 521.26.

521.22 Intra-BMC Rate Category

The intra-BMC rate category applies to Parcel Post subclass mail originating and destinating within a designated BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.

521.23 Parcel Select—Destination Bulk Mail Center (DBMC) Rate Category

The Parcel Select—DBMC rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces entered at a designated destination BMC, auxiliary service facility, or other

equivalent facility, as specified by the Postal Service.

521.24 Parcel Select—Destination Sectional Center Facility (DSCF) Rate Category

The Parcel Select—DSCF rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces sorted to five-digit destination ZIP Codes as specified by the Postal Service (*except as described in Section 521.25*) and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

521.25 Surcharge for Parcel Select—Destination Sectional Center Facility (DSCF) Rate Nonmachinable Parcels Sorted to 3-digit Zip Codes

The Parcel Select—DSCF Surcharge applies, in addition to the appropriate DSCF Parcel Select Rate, to mail that does not meet the machinability criteria specified by the Postal Service and is prepared in a mailing of at least 50 pieces sorted to three-digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

521.2[5]6 Parcel Select—Destination Delivery Unit (DDU) Rate Category

The Parcel Select—DDU rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces, and entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

521.3 Bulk Parcel Post

Bulk Parcel Post mail is Parcel Post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined or pieces measuring over 108 inches in length and girth combined are not mailable as Bulk Parcel Post mail.

521.31 Barcode Discount

The barcode discount applies to Bulk Parcel Post mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

521.4 Bulk Mail Center (BMC) Presort Discounts

521.41 BMC Presort Discount

The BMC presort discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of 50 or more pieces, entered at a facility authorized by the Postal Service, and sorted to destination BMCs, as specified by the Postal Service.

521.42 Origin Bulk Mail Center (OBMC) Discount

The origin bulk mail center discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of at least 50 pieces, entered at the origin BMC, and sorted to destination BMCs, as specified by the Postal Service.

521.5 Barcode Discount

The barcode discount applies to Inter-BMC, Intra-BMC, and Parcel Select—DBMC Parcel Post subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

521.6 Oversize Parcel Post

521.61 Excessive Length and Girth

Parcel Post subclass mail pieces exceeding 108 inches in length and girth combined, but not greater than 130 inches in length and girth combined, are mailable.

521.62 Balloon Rate

Parcel Post subclass mail pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

521.7 Nonmachinable Surcharges

a. Inter-BMC, Intra-BMC, and Parcel Select—DBMC Parcel Post mail that does not meet machinability criteria specified by the Postal Service is subject to a nonmachinable surcharge.

b. *Parcel Select—DSCF Parcel Post mail that does not meet machinability criteria specified by the Postal Service, and which is sorted to three-digit destination ZIP Codes as specified by the Postal Service, is subject to a nonmachinability surcharge for 3-digit nonmachinable DSCF Parcel Post.*

521.8 Pickup Service

Pickup service is available for Parcel Post subclass mail under terms and conditions specified by the Postal Service.

522 Bound Printed Matter Subclass

522.1 Definition

The Bound Printed Matter subclass consists of Package Services mail weighing not more than 15 pounds, which:

- a. Consists of advertising, promotional, directory, or editorial material, or any combination thereof;
- b. Is securely bound by permanent fastenings including, but not limited to, staples, spiral bindings, glue, and stitching; loose leaf binders and similar fastenings are not considered permanent;
- c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures or images or any combination of these, by any process other than handwriting or typewriting;
- d. Does not have the nature of personal correspondence;
- e. Is not stationery, such as pads of blank printed forms.

522.2 Description of Rate Categories

522.21 Single-Piece Rate Category

The single-piece rate category applies to Bound Printed Matter subclass mail which is not mailed under section 522.3 or 522.4.

522.22 Basic Presort Rate Category

The basic presort rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces, prepared and presorted as specified by the Postal Service.

522.23 Carrier Route Presort Rate Category

The carrier route presort rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces of carrier route presorted mail, prepared and presorted as specified by the Postal Service.

522.24 Destination Bulk Mail Center (DBMC) Rate Category

The destination bulk mail center rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

522.25 Destination Sectional Center Facility (DSCF) Rate Category

The destination sectional center facility rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing sorted to five-digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

522.26 Destination Delivery Unit (DDU) Rate Category

The destination delivery unit rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

522.3 Barcode Discount

The *parcel* barcoded discount or *flats barcoded discount* apply[applies] to single-piece rate and Basic Presort Rate Bound Printed Matter subclass *parcel* or *flat* mail, *respectively*, that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

522.4 Flats Differential

Flats-shaped single-piece rate, Basic Presort Rate, and Carrier Route Presort Rate Bound Printed Matter subclass mail that meets the preparation criteria specified by the Postal Service is eligible for a rate reduction in the form of a flats differential.

523 Media Mail Subclass

523.11 Definition

The Media Mail subclass consists of Package Services mail of the following types:

- a. Books, including books issued to supplement other books, of at least eight printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books. Not more than three of the announcements may contain as part of their format a single order form, which may also serve as a postcard. These order forms are in addition to and not in lieu of order

forms which may be enclosed by virtue of any other provision;

b. 16 millimeter or narrower width films which must be positive prints in final form for viewing, and catalogs of such films, of 24 pages or more, at least 22 of which are printed, except when sent to or from commercial theaters;

c. Printed music, whether in bound form or in sheet form;

d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests and other mental and personal qualities with or without answers, test scores or identifying information recorded thereon in writing or by mark;

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings. Not more than three of the announcements may contain as part of their format a single order form, which may also serve as a postcard. These order forms are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

f. Playscripts and manuscripts for books, periodicals and music;

g. Printed educational reference charts, permanently processed for preservation;

h. Printed educational reference charts, including but not limited to

i. Mathematical tables,

ii. Botanical tables,

iii. Zoological tables, and

iv. Maps produced primarily for educational reference purposes;

i. Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students; and

j. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

523.2 Description of Rate [Categories]Categories

523.21 Single-Piece Rate Category

The single-piece rate category applies to Media Mail not mailed under section 523.22 or 523.23 prepared as specified by the Postal Service.

523.22 [Level A]Five-Digit Presort Rate Category

The [Level A]Five-Digit presort rate category applies to mailings of at least [500]300 pieces [of]in any Media Mail subclass presorted category, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

523.23 [Level B]Basic Presort Rate Category

The [Level B]Basic Presort[presort] rate category applies to mailings of at least [500]300 pieces [of]in any Media Mail subclass presorted category, prepared and presorted [to destination Bulk Mail Centers], as specified by the Postal Service, other than to five-digit destination ZIP Codes.

523.3 Barcode Discount

The barcode discount applies to single-piece rate and [Level B]Basic Presort [presort] rate Media Mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

524 Library Mail Subclass

524.1 Definition

524.11 General

The Library Mail subclass consists of Package Services mail of the following types:

a. Matter designated in section 524.13, loaned or exchanged (including cooperative processing by libraries) between:

i. Schools or colleges, or universities;

ii. Public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, or between such organizations and their members, readers or borrowers.

b. Matter designated in section 524.14, mailed to or from schools, colleges, universities, public libraries, museums and herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations; or

c. Matter designated in section 524.15, mailed from a publisher or a distributor to a school, college, university or public library.

524.12 Definition of Nonprofit Organizations and Associations

Nonprofit organizations or associations are defined in section 1009.

524.13 Library subclass mail under section 524.11.a

Matter eligible for mailing as Library Mail under subsection a of section 524.11 consists of:

a. Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no

advertising other than incidental announcements of books;

b. Printed music, whether in bound form or in sheet form;

c. Bound volumes of academic theses in typewritten or other duplicated form;

d. Periodicals, whether bound or unbound;

e. Sound recordings;

f. Other library materials in printed, duplicated or photographic form or in the form of unpublished manuscripts; and

g. Museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interest of museums and herbaria.

524.14 Library Mail under section 524.11.b

Matter eligible for mailing as Library Mail under subsection b of section 524.11 consists of:

a. 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms; all of which must be positive prints in final form for viewing;

b. Sound recordings;

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria;

d. Scientific or mathematical kits, instruments or other devices;

e. Catalogs of the materials in subsections a through d of section 524.14 and guides or scripts prepared solely for use with such materials.

524.15 Library Mail under section 524.11.c

Matter eligible for mailing as Library subclass mail under subsection c of section 524.11 consists of books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

524.2 Description of Rate Categories

524.21 Single-Piece Rate Category

The single-piece rate category applies to Library Mail not mailed under section 524.22 or 524.23 prepared as specified by the Postal Service.

524.22 [Level A]Five-Digit Presort Rate Category

The [Level A]Five-Digit Presort[presort] rate category applies to mailings of at least [500]300 pieces [of]in any Library Mail subclass

presorted category, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

524.23 [Level B]Basic Presort Rate Category

The [Level B]Basic Presort[presort] rate category applies to mailings of at least [500]300 pieces [of]in any Library Mail subclass *presorted category*, prepared and presorted [to destination Bulk Mail Centers] as specified by the Postal Service, *other than to five-digit destination ZIP Codes*.

524.3 Barcode Discount

The barcode discount applies to Single-Piece Rate and [Level B]Basic Presort Rate Library Mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

530 Physical Limitations

531 Size

Except as provided in section 521.61, Package Services mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual Package Services mail subclasses.

532 Weight

Package Services mail may not weigh more than 70 pounds. Additional weight limitations apply to individual Package Services mail subclasses.

540 Postage and Preparation

541 Postage

Postage must be paid as set forth in section 3000. All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

542 Preparation

All pieces in a Package Services mailing must be separately addressed. All pieces in a Package Services mailing must be identified as specified by the Postal Service, and must contain the ZIP Code of the addressee when specified by the Postal Service. All Package Services mailings must be prepared and presented as specified by the Postal Service. Two or more Package Services mailings may be commingled and mailed only when specific methods approved by the Postal Service for determining and verifying postage are followed.

543 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate

as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed.

544 Attachments and Enclosures

544.1 General

First-Class Mail or Standard Mail may be attached to or enclosed in Package Services mail. The piece must be marked as specified by the Postal Service. Except as provided in sections 544.2 and 544.3, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class,[or] Standard Mail, *or Package Services* rate for which it qualifies unless the rate applicable to the host piece is higher.

544.2 Specifically Authorized Attachments and Enclosures

Package Services mail may contain enclosures and attachments as specified by the Postal Service and as described in subsections a and e of section 523.1, with postage paid on the combined piece at the Package Services rate applicable to the host piece.

544.3 Incidental First-Class Attachments and Enclosures

First-Class Mail that meets one or more of the definitions in subsections b through d of section 210, may be attached to or enclosed with Package Services mail, with postage paid on the combined piece at the Package Services rate applicable to the host piece, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

550 Deposit and Delivery

551 Deposit

Package Services mail must be deposited at places and times designated by the Postal Service.

552 Service

Package Services mail may receive deferred service.

553 Forwarding and Return

Undeliverable-as-addressed Package Services mail will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer. Pieces which combine Package Services mail with First-Class Mail or Standard Mail will be forwarded if undeliverable-as-addressed, and returned if undeliverable, as specified by the Postal Service. When Package Services mail is forwarded or returned from one post

office to another, additional charges will be based on the applicable single-piece Package Services mail rate.

560 Ancillary Services

Package Services mail will receive the following services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	911
b. Certificates of mailing	947
c. COD	944
d. Insurance	943
e. Special handling	952
f. Return receipt (merchandise only)	945
g. Merchandise return	932
h. Delivery Confirmation (limited to parcel-shaped Package Services Mail)	948
i. Shipper Paid Forwarding	936
j. Signature Confirmation limited to parcel-shaped Package Services Mail	949
k. Parcel Airlift	951

Insurance, special handling, and COD services may not be used selectively for individual pieces in a multi-piece Package Services mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

570 Rates and Fees

The rates and fees for Package Services Mail are set forth as follows:

	Schedule
a. Parcel Post subclass.	
Inter-BMC	[522.2A]521.2A
Intra-BMC	[522.2B]521.2B
Parcel Select.	
Destination BMC	[522.2C]521.2C
Destination SCF	[522.2D]521.2D
Destination Delivery Unit	
[522.2E]521.2E.	
b. Bound Printed Matter subclass.	
Single-Piece	522A
Basic Presort and Carrier Route	522B
Destination Entry Basic Presort	522C
Destination Entry Carrier Route Presort	522D
c. Media Mail subclass ...	[323.1]523
d. Library Mail subclass ..	[323.2]524
e. Fees	1000

580 Authorizations and Licenses

581 Parcel Post Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of any Parcel Select rate category mail in the Parcel

Post subclass. Payment of the fee allows the mailer to mail at any Parcel Select rate.

582 Bound Printed Matter Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of Destination BMC, Destination SCF or Destination Delivery Unit rate category mail in the Bound Printed Matter subclass. Payment of the fee allows the mailer to mail at any destination entry Bound Printed Matter rate.

583 Media Mail Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of presorted Media Mail. Payment of the fee allows the mailer to mail at any presorted Media Mail rate.

584 Library Mail Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of presorted Library Mail. Payment of the fee allows the mailer to mail at any presorted Library Mail rate.

Special Services

Classification Schedule

910 Addressing

911 Address Correction Service

911.1 Definition

911.11

Address Correction Service provides a mailer both an addressee's former and current address, if the correct address is known to the Postal Service. If the correct address is not known to the Postal Service, Address Correction Service provides the reason why the Postal Service could not deliver the mailpiece as addressed.

911.2 Availability

911.21

Address Correction service is available to mailers of postage prepaid mail of all classes, except for mail addressed for delivery by military personnel at any military installation. Address Correction Service is mandatory for Periodicals class mail.

911.22

Automated Address Correction Service is available to mailers who can

receive computerized address corrections and meet the requirements specified by the Postal Service.

911.3 Mailer Requirements

911.31

Mail, other than Periodicals class mail, sent under this section must bear a request for Address Correction service.

911.4 Other Services

911.41

Address Correction Service serves as a prerequisite for Shipper Paid Forwarding.

911.5 Fees

911.51

The fees for Address Correction Service are set forth in Fee Schedule 911. These fees do not apply when the correction is provided incidental to the return of the mailpiece to the sender.

912 Mailing List Services

912.1 Definition

912.11

Mailing List services enable an eligible mailer to obtain the following services:

- a. Correction of Mailing Lists;
- b. Change-of-Address Information for Election Boards and Registration Commissions;
- c. ZIP Coding of Mailing Lists; and
- d. Sequencing of Address Cards.

912.2 Description of Services

a. Correction of Mailing Lists. This service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists. New names will not be added to a name and address mailing list, and street address numbers will not be added or changed for an occupant mailing list.

(1) *The Postal Service provides the following corrections to name and address lists:*

- i. Deletion of names to which mail cannot be delivered or forwarded;
- ii. Correction of incorrect house, rural, or post office box numbers; and
- iii. Furnishing of new addresses, including Zip Codes, when permanent forwarding orders are on file for customers who have moved.

This service does not include the addition of new names.

(2) *The Postal Service provides the following corrections to occupant lists:*

- i. Deletion of numbers representing incorrect or non-existent street addresses;
- ii. Identification of business addresses and rural route addresses, to the extent known; and

iii. Grouping of corrected cards or sheets by route.

c. Change-of-Address Information for Election Boards and Registration Commissions. This service provides election boards and voter registration commissions with the current address of a resident addressee, if known to the Postal Service.

d. ZIP Coding of Mailing Lists. This service provides sortation of addresses to the finest possible ZIP Code level.

e. Sequencing of Address Cards. This service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.

912.3 Requirements of Customer

912.31

Correction of Mailing List service is available only to the following owners of name and address or occupant mailing lists:

- a. Members of Congress
- b. Federal agencies
- c. State government departments
- d. Municipalities
- e. Religious organizations
- f. Fraternal organizations
- g. Recognized charitable organizations
- h. Concerns or persons who solicit business by mail

912.32

A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as specified by the Postal Service.

912.33

Gummed labels, wrappers, envelopes, Stamped Cards, or postcards indicative of one-time use will not be accepted as mailing lists.

912.4 Fees

912.41

The fees for Mailing List services are set forth in Fee Schedule 912.

920 Delivery Alternatives

921 Post Office Box and Caller Service

921.1 Post Office Box Service

921.11 Definition

921.111

Post Office Box service provides the customer with a private, locked receptacle for the receipt of mail during the hours specified by the Postal Service.

921.12 Limitations

921.121

The Postal Service may limit the number of post office boxes occupied by any one customer.

921.122

Post Office Box service is not available to a customer whose sole purpose for using this service is to obtain free forwarding or transfer of mail by filing change-of-address orders.

921.13 Fees

921.131

Fees for Post Office Box service are set forth in Fee Schedule 921.

921.132

In postal facilities primarily serving academic institutions or the students of such institutions, fees for post office boxes are:

Period of box use	Fee
95 days or less	½ semiannual fee.
96 to 140 days	¾ semiannual fee.
141 to 190 days	Full semiannual fee.
191 to 230 days	1¼ semiannual fee.
231 to 270 days	1½ semiannual fee.
271 days to full year	Twice semiannual fee.

921.133

No refunds will be made for post office box fees paid under section 921.132.

921.134

Two box keys are available upon payment of a refundable deposit, as specified by the Postal Service. Additional keys, including replacement keys, will be provided, as specified by the Postal Service, only upon payment of the key fee set forth in Fee Schedule 921. Changing the lock on a box is available upon request of the primary box customer and payment of the lock replacement fee set forth in Fee Schedule 921.

921.2 Caller Service

921.21 Definition

921.211

Caller service provides a means for receiving mail, and enables an eligible customer to have properly addressed mail delivered through a call window or loading dock.

921.22 Availability

921.221

Caller service is provided to customers at the discretion of the Postal Service, based on mail volume received

and capacity and utilization of post office boxes at any one facility.

921.222

Caller service is not available to a customer whose sole purpose for using this service is to obtain free forwarding or transfer of mail by filing change-of-address orders.

921.23 Fees

921.231

Fees for Caller service are set forth in Fee Schedule 921.

930 Payment Alternatives

931 Business Reply Mail

931.1 Definitions

931.11

Business Reply Mail service enables a Business Reply Mail permit holder, or the permit holder's authorized representative, to distribute Business Reply Mail cards, envelopes, cartons and labels, which can then be used by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. The permit holder guarantees payment on delivery of postage and fees for the Business Reply Mail pieces that are returned to the addressee, including any pieces that the addressee refuses.

931.2 Mailer Requirements

931.21

Business reply cards, envelopes, cartons and labels must meet the addressing and preparation requirements specified by the Postal Service. Qualified Business Reply Mail must in addition meet the requirements presented in sections 221.24 or 222.34 for the First-Class Mail Qualified Business Reply Mail rate categories.

931.22

To qualify for the advance deposit account per-piece fees, the customer must maintain sufficient money in an advance deposit account to cover postage and fees due for returned Business Reply Mail.

931.23

To qualify for the nonletter-size weight-averaging per-piece and monthly fees set forth in Fee Schedule 931, the permit holder must be authorized for weight averaging, and receive Business Reply Mail pieces that meet the addressing and other preparation requirements specified by the Postal Service, but do not meet the machinability requirements specified by the Postal Service for mechanized or automation letter sortation.

931.3 Other Services

931.31 Reserved

931.4 Fees

931.41

Fees for Business Reply Mail are set forth in Fee Schedule 931.

931.42

[The]To qualify for any service level except regular (no accounting fee) Business Reply Mail, the annual accounting fee set forth in Fee Schedule 1000 must be paid each year for each business reply advance deposit account at each facility where the mail is to be received.

931.43

The nonletter-size weight averaging monthly fee set forth in Fee Schedule 931 must be paid each month during any part of which the permit holder is authorized to use the weight averaging fees.

931.5 Authorizations and Licenses

931.51

In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 1000.

931.52

Except as provided in section 931.53, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.53

If the Business Reply Mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all Business Reply Mail.

931.54

The license to mail Business Reply Mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.55

Authorization to pay nonletter-size weight-averaging Business Reply Mail fees as set forth in Fee Schedule 931 may be canceled for failure of a Business Reply Mail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

932 Merchandise Return Service**932.1 Definition****932.11**

Merchandise Return service enables a Merchandise Return service permit holder to authorize its customers to return a parcel with the postage paid by the permit holder.

932.2 Availability**932.21**

Merchandise Return service is available to all Merchandise Return service permit holders who guarantee payment of postage and fees for all returned parcels.

932.22

Merchandise Return service is available for the return of any parcel under the following classification schedules:

- a. First-Class Mail
- [b. Standard Mail]
- [c.]b. Package Services

932.3 Mailer Requirements**932.31**

Merchandise return labels must be prepared as specified by the Postal Service, and be made available to the permit holder's customers.

932.4 Other Services**932.41**

The following services may be purchased in conjunction with Merchandise Return Service:

Service	Fee schedule
a. Certificate of Mailing	947
b. Insurance	943
c. Registered Mail	942
d. Special Handling	952

932.5 Fees**932.51**

The permit holder must pay the accounting fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.

932.6 Authorizations and Licenses**932.61**

A permit fee as set forth in Schedule 1000 must be paid once each 12-month period by shippers utilizing Merchandise Return service.

932.62

The merchandise return permit may be canceled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned

parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

933 On-Site Meter Service**933.1 Definition****933.11**

On-Site Meter service enables a mailer or meter manufacturer to obtain the following meter-related services from the Postal Service at the mailer's or meter manufacturer's premises:

- a. checking a meter in or out of service; and
- b. setting or examining a meter.

933.2 Availability**933.21**

On-Site Meter service is available on a scheduled basis, and meter setting may be performed on an emergency basis for those customers enrolled in the scheduled on-site meter setting or examination program.

933.3 Fees**933.31**

The fees for On-Site Meter service are set forth in Fee Schedule 933. The basic meter service fee is charged whenever a postal employee is available to provide a meter-related service in section 933.11 at the mailer's or meter manufacturer's premises, even if no particular service is provided.

934 Reserved**935 Bulk Parcel Return Service****935.1 Definition****935.11**

Bulk Parcel Return Service provides a method whereby high-volume parcel mailers may have machinable Standard Mail parcels returned to designated postal facilities for pickup by the mailer at a predetermined frequency specified by the Postal Service or delivered by the Postal Service in bulk in a manner and frequency specified by the Postal Service. Such parcels are being returned because they:

- a. are undeliverable-as-addressed;
- b. have been opened, resealed, and redeposited into the mail for return to the mailer using the return label described in section 935.36 below; or
- c. are found in the mailstream, having been opened, resealed, and redeposited by the recipient for return to the mailer, and it is impracticable or inefficient for the Postal Service to return the mailpiece to the recipient for payment of return postage.

935.2 Availability**935.21**

Bulk Parcel Return Service is available only for the return of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

935.3 Mailer Requirements**935.31**

Mailers must receive authorization from the Postal Service to use Bulk Parcel Return Service.

935.32

To claim eligibility for Bulk Parcel Return Service at each facility through which the mailer requests Bulk Parcel Return Service, the mailer must demonstrate receipt of 10,000 returned machinable parcels at a given delivery point in the previous postal fiscal year or must demonstrate a high likelihood of receiving 10,000 returned parcels in the postal fiscal year for which the service is requested.

935.33

Payment for Bulk Parcel Return Service is made through advance deposit account, or as otherwise specified by the Postal Service.

935.34

Mail for which Bulk Parcel Return Service is requested must bear endorsements specified by the Postal Service.

935.35

Bulk Parcel Return Service mailers must meet the documentation and audit requirements of the Postal Service.

935.36

Mailers of parcels endorsed for Bulk Parcel Return Service may furnish the recipient a return label, prepared at the mailer's expense to specifications set forth by the Postal Service, to authorize return of opened, machinable parcels at the expense of the original mailer. There is no additional fee for use of the label.

935.4 Other Services**935.41**

The following services may be purchased in conjunction with Bulk Parcel Return Service:

Service	Fee schedule
a. Address Correction Service	911
b. Certificate of Mailing	947
c. Shipper-Paid Forwarding ..	936

935.5 Fees

935.51

The per return fee for Bulk Parcel Return Service is set forth in Fee Schedule 935.

935.52

The permit holder must pay the accounting fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.

935.6 Authorizations and Licenses

935.61

A permit fee as set forth in Schedule 1000 must be paid once each 12-month period by mailers utilizing Bulk Parcel Return Service.

935.62

The Bulk Parcel Return Service permit may be canceled for failure to maintain sufficient funds in an advance deposit account to cover postage and fees on returned parcels or for failure to meet the specifications of the Postal Service, including distribution of return labels that do not conform to Postal Service specifications.

936 Shipper-Paid Forwarding

936.1 Definition

936.11

Shipper-Paid Forwarding enables mailers to have undeliverable-as-addressed machinable Standard Mail parcels forwarded at applicable First-Class Mail[or Package Service mail] rates for up to one year from the date that the addressee filed a change-of-address order. If Shipper-Paid Forwarding is elected for a parcel that is returned, the mailer will pay the applicable First-Class Mail[or Package Service mail] rate, or the Bulk Parcel Return Service fee, if that service was elected.

936.2 Availability

936.21

Shipper-Paid Forwarding is available only for the forwarding of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

936.22

Shipper-Paid Forwarding is available only if automated Address Correction Service, as described in section 911, is used.

936.3 Mailer Requirements

936.31

Mail for which Shipper-Paid Forwarding is purchased must meet the preparation requirements of the Postal Service.

936.32

Payment for Shipper-Paid Forwarding is made through advance deposit account, or as otherwise specified by the Postal Service.

936.33

Mail for which Shipper-Paid Forwarding is requested must bear endorsements specified by the Postal Service.

936.4 Other Services

936.41

The following services may be purchased in conjunction with Shipper-Paid Forwarding:

Service	Fee schedule
a. Certificate of Mailing	947
b. Bulk Parcel Return Service	935

936.5 Applicable Rates and Fees

936.51

Except as provided in section 935, single-piece rates under the Letters and Sealed Parcels subclass or the Priority Mail subclass of First-Class Mail, [or the Parcel Post subclass of Package Services,] as set forth in Rate Schedules 221, and 223, [and 521.2A, and 521.2B] apply to pieces forwarded or returned under this section.

936.52

The accounting fee specified in Fee Schedule 1000 must be paid once each 12-month period for each advance deposit account.

940 Accountability and Receipts

941 Certified Mail

941.1 Definition

941.11

Certified Mail service provides a mailer with evidence of mailing and, upon request, *electronic confirmation that an article was delivered or that a delivery attempt was made*, and guarantees retention of a record of delivery by the Postal Service for a period specified by the Postal Service.

941.2 Availability

941.21

Certified Mail service is available for matter mailed as First-Class Mail.

941.3 Included Services

941.31

If requested by the mailer, the Postal Service will indicate the time of acceptance on the mailing receipt. *A mailer may obtain a copy of the mailing receipt on terms specified by the Postal Service.*

941.32

If the initial attempt to deliver the mail is not successful, a notice of attempted delivery is left at the mailing address, *and the date and time of the attempted delivery is made available to the mailer.*

941.33

[A mailer may obtain a copy of the mailing receipt on terms specified by the Postal Service.] *The date and time of delivery is made available to the mailer electronically.*

941.4 Mailer Requirements

941.41

Certified Mail must be deposited in a manner specified by the Postal Service.

941.42

The mailer must mail the article at a post office, branch, or station, or give the article to a rural carrier, in order to obtain a mailing receipt.

941.5 Other Services

941.51

The following services may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. Restricted Delivery	946
b. Return Receipt	945

941.6 Fees

941.61

The fee for Certified Mail service is set forth in Fee Schedule 941.

942 Registered Mail

942.1 Definition

942.11

Registered Mail service provides added protection to mail sent under this section and indemnity in case of loss or damage. The amount of indemnity depends upon the actual value of the article at the time of mailing, up to a maximum of \$25,000, and is not available for articles of no value.

942.2 Availability

942.21

Registered Mail service is available for prepaid First-Class Mail of any value, if the mail meets the minimum requirements for length and width specified by the Postal Service.

942.22

Registered Mail service is not available for:

a. All delivery points because of the high security required for Registered Mail; in addition, liability is limited in some geographic areas;

b. Mail of any class sent in combination with First-Class Mail;

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

942.3 Included Services

942.31

The following services are provided as part of Registered Mail service at no additional cost to the mailer:

a. A mailing receipt;

b. *Electronic confirmation, upon request, that an article was delivered or that delivery attempt was made;*

[b].c. A record of delivery, retained by the Postal Service for a specified period of time;

[c].d. A notice of attempted delivery, left at the mailing address if the initial delivery attempt is unsuccessful; and

[d].e. A notice of nondelivery, when Registered Mail is undeliverable-as-addressed and cannot be forwarded.

942.32

Registered Mail is forwarded and returned without additional registry charge.

942.4 Mailer Requirements

942.41

Registered Mail must be deposited in a manner specified by the Postal Service.

942.42

Indemnity claims for Registered Mail must be filed within a period of time, specified by the Postal Service, from the date the article was mailed. A claim concerning complete loss of registered articles may be filed by the mailer only. A claim concerning damage to or partial loss of registered articles may be filed by either the mailer or addressee.

942.5 Other Services

942.51

The following services may be obtained in conjunction with mail sent

under this section upon payment of applicable fees:

Service	Fee schedule
a. Collect on Delivery	944
b. Restricted Delivery	946
c. Return Receipt	945
d. Merchandise Return (shippers only)	932

942.6 Fees

942.61

The fees for Registered Mail are set forth in Fee Schedule 942.

942.62

There are no additional Registered Mail fees for forwarding and return of Registered Mail.

943 Insurance

943.1 Express Mail Insurance

943.11 Definition

943.111

Express Mail Insurance provides the mailer with indemnity for loss of, rifling of, or damage to items sent by Express Mail.

943.12 Availability

943.121

Express Mail Insurance is available only for Express Mail.

943.13 Limitations and Mailer Requirements

943.131

Insurance coverage is provided, for no additional charge, up to [\$500]\$100 per-piece for document reconstruction, up to \$5,000 per occurrence, regardless of the number of claimants. *Insurance coverage for merchandise is also provided, for no additional charge, up to \$100 per-piece. Additional merchandise insurance coverage may be purchased for a fee.* The maximum liability for merchandise is \$5,000 per-piece. For negotiable items, currency, or bullion, the maximum liability is \$15.

943.132

Indemnity claims for Express Mail must be filed within a specified period of time from the date the article was mailed.

943.133

Indemnity will be paid under terms and conditions specified by the Postal Service.

943.134

Among other limitations specified by the Postal Service, indemnity will not

be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Due to seizure by any agency of government; or

d. Due to war, insurrection or civil disturbances.

[913]943.14 Other Services

943.141 Reserved

943.15 Fees

943.151

The fees for Express Mail Insurance service are set forth in Fee Schedule 943.

943.2 General Insurance

943.21 Definition

943.211

General Insurance provides the mailer with indemnity for loss of, rifling of, or damage to mailed items. General Insurance provides a bulk option for mail meeting the conditions described below and specified further by the Postal Service.

943.22 Availability

943.221

General Insurance is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail or Package Services;

b. Package Services;

c. Regular and Nonprofit subclasses of Standard Mail, for Bulk Insurance only, for mail subject to residual shape surcharge.

943.222

General Insurance is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

943.223

The Bulk Insurance option of General Insurance service is available for mail entered in bulk at designated facilities and in a manner specified by the Postal Service, including the use of electronic manifesting.

943.23 Included Services

943.231

For General Insurance, the mailer is issued a receipt for each item mailed. For items insured for more than \$50, a record of delivery is retained by the Postal Service for a specified period.

943.232

For items insured for more than \$50, a notice of attempted delivery is left at the mailing address when the first attempt at delivery is unsuccessful.

943.233

Mail undeliverable as addressed will be returned to the sender as specified by the sender or by the Postal Service.

943.24 Limitations and Mailer Requirements

943.241

Mail insured under section 943.2 must be deposited as specified by the Postal Service.

943.242

Bulk Insurance must bear endorsements and identifiers specified by the Postal Service. Bulk Insurance mailers must meet the documentation requirements of the Postal Service.

943.243

By insuring an item, the mailer guarantees forwarding and return postage.

943.244

General Insurance, other than Bulk Insurance, provides indemnity for the actual value of the article at the time of mailing. Bulk Insurance provides indemnity for the lesser of (1) the actual value of the article at the time of mailing, or (2) the wholesale cost of the contents to the sender.

943.245

For General [i]Insurance, other than Bulk Insurance, a claim for complete loss may be filed by the mailer only, and a claim for damage or for partial loss may be filed by either the mailer or addressee. For Bulk Insurance, all claims must be filed by the mailer.

943.246

Indemnity claims must be filed within a specified period of time from the date the article was mailed.

943.25 Other Services

943.251

The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. Parcel Airlift	951
b. Restricted Delivery (for items insured for more than \$50)	946

Service	Fee schedule
c. Return Receipt (for items insured for more than \$50)	945
d. Special Handling	952
e. Merchandise Return (shippers only)	932

943.26 Fees

943.261 The fees for General Insurance are set forth in Fee Schedule 943.

944 Collect on Delivery

944.1 Definition

944.11

Collect on Delivery (COD) service allows a mailer to mail an article for which full or partial payment has not yet been received and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

944.2 Availability

944.21

COD service is available for collection of \$1,000 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

- Express Mail
- First-Class Mail
- Package Services

944.22

Service under this section is not available for:

- Collection agency purposes;
- Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;
- Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate COD shipment consists of merchandise or bill of lading, the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action;
- Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges;
- Goods that have not been ordered by the addressee.

944.3 Included Services

944.31

COD service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only

the receipt of the instrument issued to the mailer after payment of COD charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

944.32

A receipt is issued to the mailer for each piece of COD mail. Additional copies of the original mailing receipt may be obtained by the mailer.

944.33

Delivery of COD mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of attempted delivery will be left at the mailing address.

944.34

The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

944.35

The mailer may designate a new addressee or alter the COD changes by submitting the appropriate form and by paying the appropriate fee as set forth in Fee Schedule 944.

944.4 Limitations and Mailer Requirements

944.41

The mailer must identify COD mail as COD mail, as specified by the Postal Service.

944.42

COD mail must be deposited in a manner specified by the Postal Service.

944.43

A mailer of COD mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

944.44

For COD mail sent as Package Services mail, postage at the applicable rate will be charged to the addressee:

- When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of COD mail that was refused when first offered for delivery;
- For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

944.45

A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

944.46

COD indemnity claims must be filed within a specified period of time from the date the article was mailed, and meet the requirements specified by the Postal Service.

944.5 Other Services

944.51

The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fee:

Service	Fee schedule
a. Registered Mail, if sent as First-Class	942
b. Restricted Delivery	946
c. Special Handling	952

944.6 Fees

944.61

Fees for COD service are set forth in Fee Schedule 944.

945 Return Receipt

945.1 Regular Return Receipt

945.11 Definition

945.[11]111

Return Receipt service provides evidence to the mailer that an article has been received at the delivery address, *including an original or copy of the recipient's signature*. Mailers requesting Return Receipt service at the time of mailing will be provided, as appropriate, *an original or copy of the signature of the [addressee or addressee's agent] recipient*, the date delivered, and the address of delivery, if different from the address on the mailpiece. Mailers requesting Return Receipt service after mailing will be provided *a copy of the recipient's signature*, the date of delivery, and the name of the person who signed for the article.

945.[2]12 Availability

945.[21]121

Return Receipt service is available for mail sent under the following sections or classification schedules:

Service	Fee schedule
a. Certified Mail	941
b. COD Mail	944
c. Insurance (if insured for more than \$50)	943
d. Registered Mail	942
e. Express Mail.	

Service	Fee schedule
[f. Priority Mail (merchandise only). g. Standard Mail (limited to merchandise subject to residual shape surcharge and sent by Regular and Nonprofit subclasses). h. Package Services].	

945.[22]122

Return Receipt service is available at the time of mailing or, when purchased in conjunction with Certified Mail, COD, Insurance (if for more than \$50), Registered Mail, or Express Mail, after mailing.

945.[3]13 Included Services

945.[31]131

If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request evidence of delivery from the delivery record, at no additional fee.

945.[4]14 Other Services

945.[41]141 Reserved

[945.5 Fees]

[945.51

The fees for Return Receipt service are set forth in Fee Schedule 945.]

945.2 Return Receipt For Merchandise

945.21 Definition

945.221

Return Receipt for Merchandise service provides evidence to the mailer that an article has been received at the delivery address. A Return Receipt for Merchandise also supplies the recipient's actual delivery address if it is different from the address used by the sender. A Return Receipt for Merchandise may not be requested after mailing.

945.22 Availability

945.221

Return Receipt for Merchandise is available for merchandise sent under the following sections or classification schedules:

- a. Priority Mail
- b. Standard Mail pieces subject to the residual shape surcharge
- c. Package Services

945.23 Mailer Requirements

945.231

Return Receipt for Merchandise must be deposited in a manner specified by the Postal Service.

945.232

Return Receipt for Merchandise mail may be addressed for delivery only in the United States and its territories and possessions, through Army/Air Force (APO) and Navy (FPO) post offices, or through the United Nations Post Office, New York.

945.24 Other Services

945.241 Reserved

945.3 Fees

945.31

The fees for Return Receipt service are set forth in Fee Schedule 945.

946 Restricted Delivery

946.1 Definition

946.11

Restricted Delivery service enables a mailer to direct the Postal Service to limit delivery to the addressee or to someone authorized by the addressee to receive such mail.

946.2 Availability

946.21

This service is available for mail sent under the following sections:

Service	Fee schedule
a. Certified Mail	941
b. COD Mail	944
c. Insurance (if insured for more than \$50)	943
d. Registered Mail	942

946.22

Restricted Delivery is available to the mailer at the time of mailing or after mailing.

946.23

Restricted Delivery service is available for delivery only to natural persons specified by name.

946.3 Included Services

946.31

A record of delivery will be retained by the Postal Service for a period specified by the Postal Service.

946.4 Other Services

946.41 Reserved

946.5 Fees

946.51

The fee for Restricted Delivery service is set forth in Fee Schedule 946.

946.52

The fee (or communications charges) will not be refunded for failure to provide restricted delivery service when

requested after mailing, due to prior delivery.

947 Certificate of Mailing

947.1 Definition

947.11

Certificate of Mailing service furnishes evidence that mail has been presented to the Postal Service for mailing.

947.2 Availability

947.21

Certificate of Mailing service is available for matter sent using any class of mail.

947.3 Included Service

947.31

The mailer may obtain a copy of a Certificate of Mailing on terms specified by the Postal Service.

947.4 Limitations

947.31

The service does not entail retention of a record of mailing by the Postal Service and does not provide evidence of delivery.

947.5 Other Services

947.51

The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Fee schedule
a. Parcel Airlift	951
b. Special Handling	952

947.6 Fees

947.61

The fees for Certificate of Mailing service are set forth in Fee Schedule 947.

948 Delivery Confirmation

948.1 Definition

948.11

Delivery Confirmation service provides, *upon request*, electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made.

948.2 Availability

948.21

Delivery Confirmation service is available for *First-Class Letters and Sealed Parcels subclass mail that is parcel-shaped, as specified by the Postal Service; Priority Mail; Standard Mail, in*

the Regular and Nonprofit subclasses, that is subject to the residual shape surcharge; and Package Services mail[, as well as mail subject to the residual shape surcharge in the Regular and Nonprofit subclasses of Standard Mail] that is parcel-shaped, as specified by the Postal Service.

948.3 Mailer Requirements

948.31

Delivery Confirmation service may be requested only at the time of mailing.

948.32

Mail for which Delivery Confirmation service is requested must meet preparation requirements specified by the Postal Service, and bear a Delivery Confirmation barcode specified by the Postal Service.

948.33

Matter for which Delivery Confirmation service is requested must be deposited in a manner specified by the Postal Service.

948.4 Other Services

948.41 Reserved

948.5 Fees

948.51

The fees for Delivery Confirmation service are set forth in Fee Schedule 948.

949 Signature Confirmation

949.1 Definition

949.11

Signature Confirmation service provides, *upon request*, electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made, and a copy of the signature of the recipient.

949.2 Availability

949.21

Signature Confirmation is available for *Letters and Sealed Parcels subclass mail that is parcel-shaped, as specified by the Postal Service; Priority Mail; and Package Services mail that is parcel-shaped, as specified by the Postal Service.*

949.3 Mailer Requirements

949.31

Signature Confirmation service may be requested only at the time of mailing.

949.32 Mail for which Signature Confirmation service is requested must meet preparation requirements specified by the Postal Service, and bear a Delivery Confirmation barcode specified by the Postal Service.

949.33

Matter for which Signature Confirmation is requested must be deposited in a manner specified by the Postal Service.

949.4 Other Services

949.41 Reserved

949.5 Fees

949.51

The fees for Signature Confirmation service are set forth in Fee Schedule 949.

950 Parcel Handling

951 Parcel Airlift (PAL)

951.1 Definition

951.11

Parcel Airlift service provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.

951.2 Availability

951.21

Parcel Airlift service is available for mail sent under the Package Services Classification Schedule.

951.3 Mailer Requirements

951.31

The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to Parcel Airlift mail. In no instance may the parcel exceed 30 pounds in weight, or 60 inches in length and girth combined.

951.32

Mail sent under this section must be endorsed as specified by the Postal Service.

951.33

Parcel Airlift mail must be deposited in a manner specified by the Postal Service.

951.4 Forwarding and Return

951.41

Parcel Airlift mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 2030 of the General Definitions, Terms and Conditions. Parcel Airlift mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in section 353 as appropriate.

951.5 Other Services

951.51

The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. Certificate of Mailing	947
b. Insurance	943
c. Restricted Delivery (if insured for more than \$50) ..	946
d. Return Receipt (if insured for more than \$50)	945
e. Special Handling	952

951.6 Fees

951.61

The fees for Parcel Airlift service are set forth in Fee Schedule 951.

952 Special Handling

952.1 Definition

952.11

Special Handling service provides preferential handling to the extent practicable during dispatch and transportation.

952.2 Availability

952.21

Special Handling service is available for mail sent under the following classification schedules:

- a. First-Class Mail
- b. Package Services

952.3 Mailer Requirements

952.31

Mail sent under this section must be identified as specified by the Postal Service.

952.32

Mail sent under this section must be deposited in a manner specified by the Postal Service.

952.33

Special Handling service is mandatory for matter that requires special attention in handling, transportation and delivery.

952.4 Forwarding and Return

952.41

If undeliverable as addressed, Special Handling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the applicable Standard Mail rate is collected on delivery.

952.5 Other Services

952.51

The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. COD Mail	944
b. Insurance	943
c. Parcel Airlift	951
d. Merchandise Return (shippers only)	932

952.6 Fees

952.61

The fees for Special Handling service are set forth in Fee Schedule 952.

960 Stamped Paper

961 Stamped Envelopes

961.1 Definition

961.11

Plain Stamped Envelopes and printed Stamped Envelopes are envelopes with postage thereon offered for sale by the Postal Service.

961.2 Availability

961.21

Stamped Envelopes are available for:

- a. First-Class Mail within the first rate increment.
- b. Standard Mail mailed at a minimum per-piece rate as specified by the Postal Service.

961.22

Printed Stamped Envelopes may be obtained by special request.

961.3 Fees

961.31

The fees for Stamped Envelopes are set forth in Fee Schedule 961.

962 Stamped Cards

962.1 Definition

962.11

Stamped Cards are cards with postage imprinted or impressed on them, and supplied by the Postal Service for the transmission of messages. Double Stamped Cards consist of two attached cards, one of which may be detached by the receiver and returned by mail as a single Stamped Card.

962.2 Availability

962.21

Stamped Cards are available for First-Class Mail.

962.3 Fees

962.31

The fees for Stamped Cards are set forth in Fee Schedule 962.

970 Postal Money Orders

971 Money Order Service

971.1 Definition

971.11

Money Order service provides the customer with an instrument for payment of a specified sum of money.

971.2 Limitations

971.21

The maximum value for which a domestic postal money order may be purchased is [\$700]\$1,000. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed by law or under regulations prescribed by the Postal Service.

971.3 Included Services

971.31

A receipt of purchase is provided at no additional cost.

971.32

The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge if replaced on the date originally issued.

971.33

If a replacement money order is issued after the date of original issue because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.

971.34

Inquiries or claims may be filed by the purchaser, payee, or endorsee.

971.4 Other Services

971.41 Reserved

971.5 Fees

971.51

The fees for Money Order service are set forth in Fee Schedule 971.

980 Acceptance Alternatives

981 Netpost Mailing Online

981.1 Definition

Netpost Mailing Online is a service that allows mailers to submit electronic documents, with address lists, for subsequent conversion into hard copy form, entry as mail, and delivery.

981.2 Availability**981.21**

Netpost Mailing Online is available for documents submitted in an electronic form, along with an address list, to be entered under the following classification schedules:

- a. Express Mail;
- b. First-Class Mail;
- c. Regular and Nonprofit subclasses of Standard Mail.

981.22

Except as provided in section 981.23, documents presented through *Netpost* Mailing Online are eligible for only the following rate categories:

- a. Express Mail Next Day Service and Second Day Service
- b. First-Class Mail Letters and Sealed Parcels Automation Letters [Basic] *Mixed AADC*
- c. First-Class Mail Letters and Sealed Parcels Automation Flats [Basic] *Mixed ADC*
- d. First-Class Mail Cards Automation [Basic] *Mixed AADC*
- e. First-Class Mail Single-Piece Priority Mail
- f. Standard Mail Regular Automation [Basic] *Letters Mixed AADC*
- g. Standard Mail Regular Automation Basic Flats
- h. Standard Mail Nonprofit Automation [Basic] *Letters Mixed AADC* (starting on a date to be specified by the Postal Service)
- i. Standard Mail Nonprofit Automation Basic Flats (starting on a date to be specified by the Postal Service)

981.23

That portion of a *Netpost* Mailing Online mailing consisting of pieces with addresses that cannot be made to meet Postal Service addressing requirements is not eligible for any Automation [Basic] rate categories, but instead may be sent, at the option of the *Netpost* Mailing Online customer, at the applicable single-piece rates for First-Class Mail Letters and Sealed Parcels, First-Class Mail Cards, or Priority Mail.

981.3 Mailer Requirements**981.31**

Documents and address lists must be presented in electronic form, as specified by the Postal Service, through the Internet site specified by the Postal Service. Documents must be prepared using application software approved by the Postal Service.

981.4 Other Special Services

Other special services [that are] *may* be available in conjunction with[the

subclass of mail chosen by the] *Netpost* Mailing Online[customer are available for Mailing Online pieces only], as specified by the Postal Service.

981.5 Fees**981.51**

The fees for *Netpost* Mailing Online are described in Fee Schedule 981.

981.6 Functionally Equivalent Systems**981.61 General**

Mailpieces created by a system certified by the Postal Service to be functionally equivalent to *Netpost* Mailing Online are eligible for the same rate categories as *Netpost* Mailing Online mailpieces. Mailpieces created by a certified, functionally equivalent service are in no case eligible for rate categories providing larger discount than *Netpost* Mailing Online mailpieces would receive.

981.62 Definition

A functionally equivalent system is one which is capable of all of the following, comparable to *Netpost* Mailing Online, as specified by the Postal Service:

- a. accepting documents and mailing lists from remote users in electronic form, such as via the Internet or converting documents and mailing lists to electronic form;
- b. using the electronic documents, mailing lists, and other software including sortation software certified by the Postal Service that sorts to the finest level of sortation possible, to create barcoded mailpieces meeting the requirements for automation category mail, with 100 percent standardized addresses on all pieces claiming discounted rates;
- c. commingling mailpieces from all sources without diversion to any other system and batching them according to geographic destination prior to printing and mailing; and
- d. generating volumes that exceed on average any otherwise applicable volume minimums.

981.63 Certification**981.631 General**

Functionally equivalent systems must meet the requirements for certification specified by the Postal Service.

981.632 Fee

Functionally equivalent systems are subject to the annual certification fee set forth in Fee Schedule 1000.

981.633 Cancellation

Certification can be canceled by the Postal Service for failure to continue to meet the requirements of this section and those specified by the Postal Service.

981.7 Duration of Experimental Service Period**981.71**

The provisions of section 981 expire the later of:

- a. Three years after the implementation date specified by the Postal Service Board of Governors, or
- b. If, by the expiration date specified in (a), a proposal to make *Netpost* Mailing Online permanent is pending before the Postal Rate Commission, the later of:
 - i. Three months after the Commission takes action on such proposal under section 3624 of Title 39, or
 - ii. —If applicable—on the implementation date for a permanent *Netpost* Mailing Online.

General Definitions, Terms and Conditions**1000 General Definitions**

As used in this Domestic Mail Classification Schedule, the following terms have the meanings set forth below.

1001 Advertising

Advertising includes all material for the publication of which a valuable consideration is paid, accepted, or promised, that calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. If an advertising rate is charged for the publication of reading matter or other material, such material shall be deemed to be advertising. Articles, items, and notices in the form of reading matter inserted in accordance with a custom or understanding that textual matter is to be inserted for the advertiser or his products in the publication in which a display advertisement appears are deemed to be advertising. If a publisher advertises his own services or publications, or any other business of the publisher, whether in the form of display advertising or editorial or reading matter, this is deemed to be advertising.

1002 Aspect Ratio

Aspect ratio is the ratio of width to length.

1003 Bills and Statements of Account**1003.1**

A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.

1003.2

A statement of account is the assertion of the existence of a debt in a definite amount but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.

1003.3

A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount he is required for acquittal of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient information to enable the debtor to determine the exact amount of the claim asserted.

1003.4

A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

1004 Girth

Girth is the measurement around a piece of mail at its thickest part.

1005 Invoice

An invoice is a writing showing the nature, quantity, and cost or price of items shipped or sent to a purchaser or consignor.

1006 Permit Imprints

Permit imprints are printed indicia indicating postage has been paid by the sender under the permit number shown.

1007 Preferred Rates

Preferred rates are the reduced rates established pursuant to 39 U.S.C. 3626.

1008 ZIP Code

The ZIP Code is a numeric code that facilitates the sortation, routing, and delivery of mail.

1009 Nonprofit Organizations and Associations

Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The standard of primary purpose requires that each type of organization or

association be both organized and operated for the primary purpose. The following are the types of organizations or associations that may qualify as authorized nonprofit organizations or associations.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

- i. To conduct religious worship;
- ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;
- iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

- i. The instruction or training of the individual for the purpose of improving or developing his capabilities;
- ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

- i. To conduct research in the applied, pure or natural sciences;
- ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations that are organized for:

- i. Relief of the poor and distressed or of the underprivileged;
- ii. Advancement of religion;
- iii. Advancement of education or science;
- iv. Erection or maintenance of public buildings, monuments, or works;
- v. Lessening of the burdens of government;
- vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or:
 - (A) To lessen neighborhood tensions;
 - (B) To eliminate prejudice and discrimination;
 - (C) To defend human and civil rights secured by law; or
 - (D) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agriculture pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization that meets all the following criteria:

- i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;
- ii. Is organized under a lodge or chapter system with a representative form of government;
- iii. Follows a ritualistic format; and
- iv. Is comprised of members who are elected to membership by vote of the members.

2000 Delivery of Mail**2010 Delivery Services**

The Postal Service provides the following modes of delivery:

- a. Caller service. The fees for caller service are set forth in Fee Schedule 921.
- b. Carrier delivery service.
- c. General delivery.
- d. Post office box service. The fees for post office box service are set forth in Fee Schedule 921.

2020 Conditions of Delivery**2021 General**

Except as provided in section 2022, 2030, and 3030, mail will be delivered

as addressed unless the Postal Service is instructed otherwise by the addressee in writing.

2022 Refusal of Delivery

The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail that does not require a delivery receipt at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service. For mail that requires a delivery receipt, the addressee or his representative may read and copy the name of the sender of registered, insured, certified, COD, return receipt, and Express Mail prior to accepting delivery. Upon signing the delivery receipt the piece may not be returned to the Postal Service without the applicable postage and fees affixed.

2023 Receipt

If a signed receipt is required, mail will be delivered to the addressee (or competent member of his family), to persons who customarily receive his mail or to one authorized in writing to receive the addressee's mail.

2024 Jointly Addressed Mail

Mail addressed to several persons may be delivered to any one of them. When two or more persons make conflicting orders for delivery for the same mail, the mail shall be delivered as determined by the Postal Service.

2025 Commercial Mail Receiving Agents

Mail may be delivered to a commercial mail receiving agency on behalf of another person. In consideration of delivery of mail to the commercial agent, the addressee and the agent are considered to agree that:

- a. No change-of-address order will be filed with the post office when the agency relationship is terminated;
- b. When remailed by the commercial agency, the mail is subject to payment of new postage.

2026 Mail Addressed To Organizations

Mail addressed to governmental units, private organizations, corporations, unincorporated firms or partnerships, persons at institutions (including but not limited to hospitals and prisons), or persons in the military is delivered as addressed or to an authorized agent.

2027 Held Mail

Mail will be held for a specified period of time at the office of delivery upon request of the addressee, unless the mail:

- a. Has contrary retention instructions;
- b. Is perishable; or

c. Is registered, COD, insured, return receipt, certified, or Express Mail for which the normal retention period expires before the end of the specified holding period.

2030 Forwarding and Return

2031 Forwarding

Forwarding is the transfer of undeliverable-as-addressed mail to an address other than the one originally placed on the mailpiece. All post offices will honor change-of-address orders for a period of time specified by the Postal Service.

2032 Return

Return is the delivery of undeliverable-as-addressed mail to the sender.

2033 Applicable Provisions

The provisions of sections 150, 250, 350, 450, 550, 935 and 936 apply to forwarding and return.

2034 Forwarding for Postal Service Adjustments

When mail is forwarded due to Postal Service adjustments (such as, but not limited to, the discontinuance of the post office of original address, establishment of rural carrier service, conversion to city delivery service from rural, readjustment of delivery districts, or renumbering of houses and renaming of streets), it is forwarded without charge for a period of time specified by the Postal Service.

3000 Postage and Preparation

3010 Packaging

Mail must be packaged so that:

- a. The contents will be protected against deterioration or degradation;
- b. The contents will not be likely to damage other mail, Postal Service employees or property, or to become loose in transit;
- c. The package surface must be able to retain postage indicia and address markings;
- d. It is marked by the mailer with a material that is neither readily water soluble nor easily rubbed off or smeared, and the marking will be sharp and clear.

3020 Envelopes

Paper used in the preparation of envelopes may not be of a brilliant color. Envelopes must be prepared with paper strong enough to withstand normal handling.

3030 Payment of Postage and Fees

Postage must be fully prepaid on all mail at the time of mailing, except as

authorized by law or this Schedule. Except as authorized by law or this Schedule, mail deposited without prepayment of sufficient postage shall be delivered to the addressee subject to payment of deficient postage, returned to the sender, or otherwise disposed of as specified by the Postal Service. Mail deposited without any postage affixed will be returned to the sender without any attempt at delivery.

3040 Methods for Paying Postage and Fees

Postage for all mail may be prepaid with postage meter indicia, adhesive stamps, permit imprint, or other payment methods specified by the Postal Service. Prior authorization for use of certain payment methods may be required, as specified by the Postal Service. A fee is charged for authorization to use a permit imprint, as set forth in Schedule 1000.

3050 Reserved

3060 Special Service Fees

Fees for special services may be prepaid in any manner appropriate for the class of mail indicated or as otherwise specified by the Postal Service.

3070 Marking of Unpaid Mail

Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable First-Class rate of postage.

3080 Refund of Postage

When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made. There shall be no refund for registered, COD, general insurance, and Express Mail Insurance fees when the article is withdrawn by the mailer after acceptance. In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

3090 Calculation of Postage

When a rate schedule contains per-piece and per-pound rates, the postage shall be the sum of the charges produced by those rates. When a rate schedule contains a minimum per-piece rate and a pound rate, the postage shall be the greater of the two. When the computation of postage yields a fraction of a cent in the charge, the next higher whole cent must be paid.

4000 Postal Zones**4010 Geographic Units of Area**

In the determination of postal zones, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones.

4020 Measurement of Zone Distances

The distance upon which zones are based shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this shall not cause two post offices to be regarded as within the same local zone.

4030 Definition of Zones**4031 Local Zone**

The local zone applies to mail mailed at any post office for delivery at that office; at any city letter carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.

4032 First Zone

The first zone includes all territory within the quadrangle of entry in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area. The first zone also applies to mail between two post offices in the same sectional center.

4033 Second Zone

The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

4034 Third Zone

The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

4035 Fourth Zone

The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius

approximately 600 miles from the center of a given unit of area.

4036 Fifth Zone

The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

4037 Sixth Zone

The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

4038 Seventh Zone

The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

4039 Eighth Zone

The eighth zone includes all units of area outside the seventh zone.

4040 Zoned Rates

Except as provided in section 4050, rates according to zone apply for zone-rated mail sent between Postal Service facilities including armed forces post offices, wherever located.

4050 APO/FPO Mail**4051 General**

Except as provided in section 4052, the rates of postage for zone-rated mail transported between the United States, or the possessions or territories of the United States, on the one hand, and Army, Air Force and Fleet Post Offices on the other, or among the latter, shall be the applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet Post Office concerned.

4052 Transit Mail

The rates of postage for zone-rated mail that is mailed at or addressed to an Armed Forces post office and is transported directly to or from Armed Forces post offices at the expense of the Department of Defense, without transiting any of the 48 contiguous states (including the District of Columbia), shall be the applicable local zone rate; provided, however, that if the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery is greater than the local zone for such mail, postage shall be assessed on the basis of the distance from the place of mailing to the embarkation point or the distance from the point of

debarkation to the place of delivery of such mail, as the case may be. The word "transiting" does not include enroute transfers at coastal gateway cities which are necessary to transport military mail directly between military post offices.

5000 Privacy of Mail**5010 First-Class and Express Mail**

Matter mailed as First-Class Mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

5020 All Other Mail

Matter not paid at First-Class Mail or Express Mail rates must be wrapped or secured in the manner specified by the Postal Service so that the contents may be examined. Mailing of sealed items as other than First-Class Mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

6000 Mailable Matter**6010 General**

Mailable matter is any matter which:
a. Is not mailed in contravention of 39 U.S.C. Chapter 30, or of 17 U.S.C. 109;
b. While in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property; and
c. Is not mailed contrary to any special conditions or limitations placed on transportation or movement of certain articles, when imposed under law by the U.S. Department of the Treasury; U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Health and Human Services; U.S. Department of Transportation; and any other Federal department or agency having legal jurisdiction.

6020 Minimum Size Standards

The following minimum size standards apply to all mailable matter:
a. All items must be at least 0.007 inch thick, and
b. all items, other than keys and identification devices, which are 0.25 inch thick or less must be
i. rectangular in shape,
ii. at least 3.5 inches in width, and
iii. at least 5 inches in length.

6030 Maximum Size and Weight Standards

Where applicable, the maximum size and weight standards for each class or subclass of mail are set forth in sections 130, 230, 330, 430, 521.6, and 530.

Additional limitations may be applicable to specific subclasses, and rate and discount categories as provided

in the eligibility provisions for each subclass or category.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02-12864 Filed 5-22-02; 8:45 am]

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Federal Register

**Thursday,
May 23, 2002**

Part V

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Municipal Solid
Waste Landfills; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[AD-FRL-7215-5]

RIN 2060-AH13

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Supplement to proposed rule.

SUMMARY: This action is a supplemental proposal to the national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. On November 7, 2000, EPA proposed NESHAP for MSW landfills and requested comments on bioreactors. Based on comments to the proposed rule and additional information and analyses, EPA is adding a definition of bioreactors to the proposed rule and is proposing timely control for bioreactors located at MSW landfills with a design capacity greater than or equal to 2.5 million megagrams (Mg) and 2.5 million cubic meters (m³).

DATES: *Comments.* Comments are requested only on information and proposed requirements for bioreactors presented in this action. Submit comments on or before June 24, 2002. If a public hearing is held, written comments must be received by July 8, 2002.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 3, 2002, a public hearing will be held on June 6, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-98-28, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-98-28, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should contact JoLynn Collins, Waste and

Chemical Processes Group, Emission Standard Division, U.S. EPA (C439-03), Research Triangle Park, NC 27711, telephone (919) 541-5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A-98-28 for this regulation and associated Docket No. A-88-09 contain supporting information used in developing the standards. These dockets are located at the U.S. EPA, 401 M Street SW, Washington, DC 20460, in Room M-1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur at Waste and Chemical Processes Group, Emission Standards Division (C439-03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5256, facsimile number (919) 541-0246, electronic mail address "laur.michele@epa.gov."

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: (Docket No. A-98-28). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it "Confidential Business Information." Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Ms. Michele Laur, c/o OAQPS Document Control Officer (C404-02), U.S. EPA, Research Triangle Park, NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth

in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins at the Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Collins to verify time, date, and location of the hearing. The public hearing will provide interested parties the opportunities to present data, views, or arguments concerning this supplemental proposal.

Docket. The docket is an organized an complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's supplemental proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's supplemental proposal will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. Categories and entities potentially regulated by this action:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.
State, local, and Tribal government agencies	562212 924110	4953	Solid waste landfills; Air and water resource and solid waste management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria in §§ 63.1935 and 63.1940 of the landfills proposed rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this supplemental proposal is organized as follows:

- I. Statutory Authority
 - A. What is the source of authority for development of NESHAP?
 - B. What criteria are used in the development of NESHAP?
- II. Background
- III. Summary of Supplemental Proposed Requirements for Bioreactors
- IV. Rationale for the Proposed Requirements for Bioreactors
 - A. Why is EPA proposing supplemental requirements for bioreactors at MSW landfills?
 - B. How did EPA determine the bioreactor portion of the MSW landfill MACT floor?
 - C. How did EPA consider beyond-the-floor options?
 - D. How did EPA determine the standard for bioreactor operations at area source MSW landfills?
 - E. What is EPA's rationale for the specific requirements for bioreactors?
 - F. What other issues did EPA consider?
- V. Summary of Environmental, Energy, and Economic Impacts of the Proposed Requirements for Bioreactors
- VI. Administrative Requirements
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Executive Order 13132, Federalism
 - C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
 - D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
 - E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
 - F. Unfunded Mandates Reform Act of 1995
 - G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
 - H. Paperwork Reduction Act
 - I. National Technology Transfer and Advancement Act

I. Statutory Authority

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP), and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's supplemental proposal was on our initial list of HAP emission source categories as published in the **Federal Register** on July 16, 1992 (52 FR 31576). For "major" source MSW landfills (those that have the potential to emit 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP), the CAA requires us to develop standards that require the application of maximum achievable control technology (MACT).

Under section 112(k) of the CAA, EPA developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed as one of the 29 area source categories on July 19, 1999 (64 FR 38706) because 13 of the listed HAP are emitted from MSW landfills.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT

standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

Finally, the CAA allows NESHAP to reflect an alternative standard for area sources. The alternative standard provides for the use of generally available control technologies (GACT) or management practices to reduce emissions of HAP.

II. Background

On November 7, 2000, we proposed NESHAP for MSW landfills (65 FR 66680). When final, the rule will fulfill the requirements of section 112(d) of the CAA, which requires the Administrator to regulate emissions of HAP, and help implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA.

In the November 7, 2000 proposed landfills NESHAP, we described differences in emissions rates over time from landfills operated as bioreactors as opposed to conventional landfills. We also requested additional information on emissions from bioreactors. We solicited comments on requiring installation of collection and control systems sooner after waste is deposited in bioreactor cells.

We received five public comments addressing bioreactors. The commenters agreed that because of the enhanced biodegradation of waste in bioreactors, they generate landfill gas, including organic HAP, at higher rates soon after waste placement. The industry commenters stated that research is ongoing and there is insufficient information to precisely estimate emissions from bioreactors. They recommended timely collection and

control of bioreactors, but strongly suggested that EPA issue guidance rather than rules until additional data are collected. Other commenters representing State agencies commented that many bioreactors had installed collection and control systems prior to initiating liquids addition, and that the landfills NESHAP should require installation of collection and control systems prior to initiating liquids addition for all bioreactors, regardless of landfill size.

We reviewed the public comments and other recent literature. We also gathered additional information on the number of bioreactors, their control levels, and the timing of collection and control system installation. This supplemental proposal describes the available information, presents a supplement to the November 7, 2000 proposed landfills NESHAP, and describes the rationale for the proposed supplemental requirements. The additional information and analyses are contained in Docket No. A-98-28.

III. Summary of Supplemental Proposed Requirements for Bioreactors

We are proposing timely installation of collection and control systems in bioreactors located at landfills with a total landfill design capacity of greater than or equal to 2.5 million Mg and 2.5 million m³. These requirements would apply to bioreactors within landfills at both major and area sources if the landfills meet the design capacity criteria. The proposed supplemental control requirements apply only to active landfills (i.e., existing and new landfills that are still accepting waste as of the date of publication of the final rule or have the capacity to accept additional waste and are not permanently closed). The requirements would not apply to bioreactors at permanently closed landfills.

The supplemental proposal would require the same level of control for the bioreactor portions of landfills as would be required in the proposed landfills NESHAP (65 FR 66680, November 7, 2000) for conventional MSW landfills (i.e., a well-designed and operated gas collection system and a control device achieving 98 percent reduction or 20 parts per million by volume (ppmv) of nonmethane organic compounds (NMOC) as is required in the final new source performance standards/emission guidelines (NSPS/EG) at 40 CFR part 60, subparts Cc and WWW. However, if you own or operate a bioreactor at a landfill that is a new affected source, then you would be required to install the gas collection and control system in the bioreactor prior to initiating liquids

addition, regardless of whether the landfill emissions rate equals or exceeds the 50 Mg/yr emissions rate criteria in the NSPS/EG. Startup of the collection and control system would be required within 90 days after initiating liquids addition. If the bioreactor is located at a landfill that is an existing affected source, then you must install and begin operating a collection and control system for the bioreactor within 3 years after publication of the final landfills NESHAP unless earlier control is already required by the NSPS/EG. You would be required to conduct a performance test and report the results within 180 days after startup of the bioreactor collection and control system.

The proposed timing for extending the collection and control system into new cells or areas of the bioreactor is also different from conventional landfills. Once control of your bioreactor is required, you would need to install collection and control systems in new areas or cells of the bioreactor prior to initiating liquids addition to that area, cell, or group of cells. Under the supplemental proposal, controls could be removed from the bioreactor portion of the landfill either: (1) When the criteria for control removal specified in the landfills NSPS/EG are met; or (2) when the bioreactor is permanently closed, liquids addition has ceased, and liquids have not been added to the bioreactor for at least 1 year.

At some landfills, a portion of the landfill is a bioreactor, and the remainder is designed and operated as a conventional landfill. In these situations, the control requirements and the timing of control installation for the conventional portion of the landfill would not change. We are not proposing to revise the NSPS/EG. Thus, you would continue to use the equations and factors in the NSPS/EG to calculate the annual uncontrolled NMOC emissions rate for your landfill as a whole (including the total waste placed in the bioreactor area and the conventional area). When your calculated uncontrolled NMOC emissions equal or exceed 50 Mg/yr, then you would install a collection and control system for the conventional portions of the landfill according to the schedule in the NSPS, or the applicable State, Tribal, or Federal plan that implements the EG.

IV. Rationale for the Proposed Requirements for Bioreactors

A. Why Is EPA Proposing Supplemental Requirements for Bioreactors at MSW Landfills?

Based on review of public comments and other available information, we have concluded that bioreactors are a distinct operation within MSW landfills, and that the appropriate timing of control for bioreactors is different from that for conventional landfills. The design and method of operation of bioreactors is different from conventional landfills, resulting in different emissions characteristics.

Conventional landfills are typically operated as "dry tombs" by minimizing the infiltration of liquids into the landfill. This can be accomplished by placement of bottom and side liners and by placement of a low permeability final cap over the waste. In addition, many sites install and operate leachate collection systems to remove leachate and thus minimize groundwater contamination. That method also results in a slower biodegradation process and a reduced rate of landfill gas generation. Some conventional landfills recirculate some or all of the collected leachate. A typical moisture content of the waste in a conventional landfill is approximately 20 percent, but it may be lower in arid areas or where all collected leachate is removed and infiltration is minimized.

A bioreactor is defined as an MSW landfill or portion of an MSW landfill where any liquid other than leachate is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste. The minimum 40 percent moisture level is based on literature that suggests the moisture content of the waste should remain in the range of 40 to 70 percent to optimize bioreactor operation. Comments on the moisture level used in the bioreactor definition are requested. The EPA also requests comments on the proposed exclusion of the definition of landfills that recirculate leachate but do not add any other liquids. If you know of situations where leachate recirculation alone can reach a 40 percent moisture level and start and sustain bioreactor operation, please provide information.

The proposed definition of bioreactor includes hybrid bioreactors, which are managed so that the waste undergoes a short (e.g., 60 day) aerobic stage, after which the waste is covered over and operated as an anaerobic bioreactor for

several years. The long-term operation, emissions pattern, and applicable control techniques for hybrid bioreactors are similar to anaerobic bioreactors. The rapid biodegradation of waste in a bioreactor leads to more rapid generation of landfill gas compared to a conventional landfill.

The vast majority of bioreactors are anaerobic or hybrid bioreactors, with at least 24 operating as of 2001. The EPA expects a large number of anaerobic bioreactors to start operation in the next few years because of their economic benefits and potential environmental benefits. For example, operating a landfill as a bioreactor extends the use of current sites and reduces the need for new sites, reducing land use and associated environmental impacts, and land purchase costs. Preliminary information suggests that bioreactors also improve the quality of leachate potentially resulting in reduced environmental impacts if any groundwater contamination were to occur. Economic benefits include avoiding the costs of leachate treatment, transport, and disposal. In addition, bioreactors emit a similar total amount of gas as conventional landfills but emit it more quickly over a shorter amount of time, thus owners and operators can convert landfill gas to energy more economically.

Because of the rapid biodegradation of waste, landfill gas (including methane, NMOC, and organic HAP) is generated at a significantly greater rate in the first couple of years after waste placement in anaerobic and hybrid bioreactors compared to conventional landfills. For example, one study indicates that in approximately 90 days, bioreactor landfills generate gas at a rate similar to what a conventional MSW landfill generates at 2 years. Public comments and published studies confirm the greater landfill gas generation rates early in the life of anaerobic and hybrid bioreactors. Emissions rates cited in the comments and literature range from 2 to 10 times as much as conventional landfills. After peaking at a higher generation rate near the time of landfill closure, bioreactor landfill gas generation declines more rapidly than conventional landfill gas generation. The total long-term amount of landfill gas from an anaerobic bioreactor is expected to be approximately the same as from a conventional landfill with the same amount of waste because the total potential landfill gas generation depends primarily on the amount of material in the waste that can eventually be decomposed. However, bioreactor landfill gas generation is significantly higher than conventional landfill gas

generation prior to and shortly after closure and significantly lower in the later years. References indicate that a bioreactor shortens the period of waste degradation and stabilization, and thus the period of most of the gas generation, from 30 to 50 years for a conventional landfill to 5 to 10 years for an anaerobic bioreactor.

Because bioreactors generate significantly more landfill gas, including organic HAP, earlier in their life than conventional landfills, the methods used in the proposed rule to calculate uncontrolled emissions and the required timing for collection and control system installation that apply to conventional landfills are not appropriate for bioreactors. The November 2000 proposed landfills NESHAP, which refer to the NSPS control requirements, would require landfills to estimate their NMOC emissions using specified equations and procedures. After landfills reach or exceed 50 Mg/yr of NMOC, they must install collection and control systems within 30 months. Gas collection must then be extended into each cell or area within the landfill within 2 years after waste is first placed in that cell or area if the area is at final grade or within 5 years if the area is still active.

For bioreactors, the 50 Mg/yr NMOC uncontrolled emissions rate would be reached sooner than calculated by the procedures in the NSPS/EG. Furthermore, because landfill gas generation rates from bioreactors are significantly higher in the early years after waste placement, allowing 30 months after uncontrolled estimated emissions reach 50 Mg/yr to install controls would allow a much higher proportion of total bioreactor emissions, including HAP, to be released uncontrolled. Modeling of a landfill in a non-arid location with a design capacity of 2.5 million Mg and a 20-year life indicates that the NSPS/EG Tier 1 procedures would not require control installation for 5 years. In this time, a bioreactor accepting the same amount of waste would have potentially emitted a total of 130 Mg of HAP and 680 Mg of NMOC. (This is based on a k value of 0.1 for the bioreactor, which may be conservatively low, so bioreactor emissions could be higher.) If the same landfill were in an arid climate, Tier 1 procedures would not require control installation for 8 years. In this time, a bioreactor accepting the same amount of waste would have potentially emitted 310 Mg of HAP and 1,600 Mg of NMOC. Due to the different emissions pattern of bioreactors, it is appropriate to require control at the start of bioreactor

operation (initiation of liquids addition).

The timing of control system removal for conventional landfills also may not be appropriate for bioreactor landfills. Because emissions decline more rapidly, a bioreactor would require control for a shorter length of time than a conventional landfill.

Because of the differences in technical design, operation, and emissions pattern over time, we have examined bioreactors as a distinct type of operation within an MSW landfill affected source, evaluated the MACT floor and MACT for bioreactor operations within MSW landfills, and are proposing supplemental requirements for bioreactors.

B. How Did EPA Determine the Bioreactor Portion of the MSW Landfill MACT Floor?

A landfill that is an affected source under the MSW landfills NESHAP may include an area designed and operated as a bioreactor and an area designed and operated as a conventional landfill. When there are distinct operations that have different emissions characteristics within an affected source, EPA often examines these operations separately in determining the MACT floor for the source as a whole. Details of the bioreactor analysis are contained in Docket No. A-98-28. The conventional landfill component of the MACT floor for existing landfills remains as described in the November 2000 proposed landfills NESHAP.

First, we reviewed the information available to identify specific bioreactors, determined which are located at major sources, and determined the level of control and the timing of installation of control systems at these bioreactors. We then determined the control level for the average (or median) of the best-performing five bioreactors, because there are fewer than 30 bioreactors at MSW landfills that are major sources. Under the CAA, the MACT floor for existing sources is based on the best performing 12 percent of sources in a category, or the best five sources if there are fewer than 30 sources in the category.

Based on the available data, we identified 24 anaerobic bioreactors. We used information from the landfills NESHAP database and other data provided by contacts familiar with these landfills to determine which of the bioreactors are located at landfills with maximum uncontrolled emissions equal to or greater than major source levels for HAP. We used the population of ten bioreactors to determine the MACT floor for bioreactors. The population includes

both major and "synthetic area" sources. A synthetic area source is a source which would otherwise be a major source, if not for enforceable emissions controls that have been installed. For example, some landfills with uncontrolled emissions above major source levels have installed controls to comply with the landfills NSPS/EG. Synthetic area sources are included in the population used to determine the MACT floor because to exclude synthetic area sources from the MACT floor determination would exclude the best-controlled sources in the industry. The CAA does not suggest that we should exclude a control technology from consideration in the MACT floor because it is so effective that it reduces emissions from a source such that the source is no longer a major source of HAP.

We identified the controls in use at the ten bioreactors with uncontrolled emissions at major source levels and determined the installation date for the controls. We found that all ten of the bioreactors have gas collection and control systems meeting the control levels in the NSPS/EG. We also found that at least five of the gas collection and control systems were installed or are being installed prior to initiating liquids addition to the bioreactors. The control systems were installed in the bioreactors sooner than required by the NSPS/EG. Therefore, we determined that the MACT floor level of control for bioreactor operations within existing MSW landfills at major sources is installation of a collection and control system that meets NSPS/EG requirements, and that these controls be installed prior to initiation of liquids addition.

Under the CAA, the new source MACT floor is based on the best-controlled similar source. We reviewed the information to determine the best control technology in use at the ten bioreactors at major and synthetic area sources, and we looked at when the control systems were installed. The best-controlled bioreactor installed a collection and control system that meets NSPS/EG requirements prior to initiation of liquids addition; therefore, this is the MACT floor level of control for bioreactor operations within new MSW landfills at major sources.

C. How Did EPA Consider Beyond-the-Floor Options?

The NSPS/EG requirements for landfill gas collection and emissions reductions are the best available control for organic HAP emissions from bioreactors. Requiring control system installation before the initiation of

liquids addition to the bioreactor is the earliest possible time to install these controls. Therefore, there were no options to consider that were more stringent than the MACT floor. The gas collection system required by the NSPS/EG (described in 40 CFR 60.753) is designed to capture as much landfill gas as possible and requires several parameters to be monitored to ensure that capture, including pressure, nitrogen or oxygen concentration, temperature, and surface methane concentration. There are no data indicating that collection systems are in use that are more effective than those required by the NSPS/EG. Similarly, there are no known technologies that can regularly achieve organic HAP reduction efficiencies greater than those specified in the NSPS/EG. The NSPS/EG rules require 98 percent reduction efficiency for NMOC, or a maximum outlet concentration of 20 ppmv if an enclosed combustion device is used. The reduction efficiencies can be regularly achieved by several types of control technologies with proper operation. Because there are no more stringent collection and control technologies or other emissions reduction techniques available, and this supplemental proposal requires installation and operation of the floor level of control as soon as possible, no options beyond-the-floor currently exist for new or existing sources.

D. How Did EPA Determine the Standard for Bioreactor Operations at Area Source MSW Landfills?

As described earlier in this preamble, MSW landfills were listed as one of 29 area source categories under section 112(k) of the CAA. Area sources can be controlled using MACT or GACT. In the proposed landfills NESHAP (65 FR 66677, November 7, 2000), we concluded that GACT is the same as MACT (the NSPS/EG level of control) for area source landfills that meet the NSPS/EG design capacity and uncontrolled NMOC emissions rate criteria. We also found that landfills below these criteria do not warrant control.

For the supplemental proposal, we have examined what constitutes GACT for area source bioreactors. We determined that for bioreactors at landfills with design capacities greater than or equal to 2.5 million Mg and 2.5 million m³, GACT is the same as MACT (i.e., timely installation of gas collection and control systems that meet NSPS/EG requirements). In reaching GACT decisions, we considered the control techniques that are generally available for area sources and factors such as the

emissions reductions, environmental impacts, and costs of these controls. Since bioreactors generate landfill gas at a faster rate, significant HAP emissions reductions will be achieved by requiring timely control of bioreactor operations at MSW landfills with design capacities greater than or equal to 2.5 million Mg and 2.5 million m³. The reductions in HAP will reduce health risks and environmental impacts associated with the HAP present in landfill gas.

The costs of requiring timely control for bioreactor operations at area source landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m³ were also considered in reaching the decision that GACT is the same as MACT for these area sources. These landfills would, at some point in their life, be required to install controls required by the NSPS/EG because the estimated uncontrolled NMOC emissions rates would reach the 50 Mg/yr emissions rate criteria. Requiring timely control of bioreactor operations means that costs will be incurred sooner and emissions reductions benefits realized earlier. An analysis of net present value (NPV) costs shows that timely control of bioreactors at a landfill with a design capacity of 2.5 million Mg is generally not more costly than controlling a conventional landfill according to the NSPS/EG schedule. If the landfill gas is used for energy, the NPV control costs for bioreactors are lower than for conventional landfills and result in greater HAP emissions reductions. For these reasons, GACT for bioreactor operations at area source landfills with design capacities greater than or equal to 2.5 million Mg and 2.5 million m³ was determined to be the same as MACT.

For bioreactor operations at area source landfills with design capacities less than 2.5 million Mg or 2.5 million m³, EPA determined that GACT does not require control. Requiring bioreactors at landfills below the design capacity cutoff to install controls would result in additional control costs because they are not otherwise required to install control by the NSPS/EG. The 2.5 million Mg and 2.5 million m³ capacity exemption excludes those landfills that can least afford the costs of collection and control systems, including small businesses and, particularly, municipalities. Furthermore, the analysis for the NSPS/EG found that a more stringent design capacity exemption level would greatly increase the number of landfills required to apply control while only achieving 25 percent additional emissions reductions. The selected design capacity criteria required control

of less than 5 percent of all landfills (at the time of the NSPS/EG promulgation), but reduced NMOC emissions by approximately 53 percent. While bioreactors have a significantly increased landfill gas generation rate early in their life, it is expected that their overall lifetime total landfill gas generation potential would not be significantly greater than that of a conventional landfill accepting the same amount of waste. Therefore, the previous analyses of potential long-term emissions reductions from control of small landfills would also apply to bioreactors based on data currently available on bioreactor operations. We request comment on exemption of small/area source landfills with bioreactor operations from this supplemental proposal. If information is submitted that shows these small/area source landfills with bioreactor operations have emission characteristics that are significantly different than conventional small/area source landfills, the data will be considered.

Other reasons for exempting small landfills are described in the proposed landfills NESHAP (65 FR 66677, November 7, 2000), and they also apply to bioreactors. For example, most existing area source landfills are closed, and their emissions are already declining. Most newer landfills are much larger than the design capacity cutoff and would be subject to the GACT control requirements. Therefore, requiring timely control of bioreactor operations at these large, open landfills would achieve significant HAP reductions at those landfills where it will be most cost effective.

E. What Is EPA's Rationale for the Specific Requirements for Bioreactors?

1. How Did EPA Select the Affected Source?

Selection of the affected source defines the boundary of the unit to which a proposed rule applies. This definition is used in combination with the date "construction" or "reconstruction" is "commenced," as defined in 40 CFR 63.2, to determine whether an affected source is an existing source or a new source.

The supplemental proposal would not substantially alter the affected source definition in the November 7, 2000 proposed landfills NESHAP. The affected source for the proposed landfills NESHAP remains the entire municipal solid waste landfill. The bioreactor is not a separate affected source, but is an operation within the affected source (the landfill). Defining the affected source broadly maintains

consistency with the NSPS/EG and the proposed landfills NESHAP. As defined in section 112 of the CAA, a new source is one that commences construction or reconstruction after the Administrator first proposes NESHAP applicable to a source. Therefore, a bioreactor is subject to the new source requirements if the landfill where it is located commences construction or reconstruction after November 7, 2000, the date of the original proposal. A bioreactor is subject to the existing source requirements if the landfill where it is located commenced construction or reconstruction on or before that date. The definition of new and existing source is consistent with the definition in the November 7, 2000 proposed landfills NESHAP. Note that the control requirements for bioreactors at new and existing sources are the same, but the initial compliance date is different.

2. How Did EPA Determine When Collection and Control Systems Must Be Installed and When They Must Start Operation?

For bioreactors that are located at landfills that are new affected sources, the proposed changes would require gas collection and control systems to be installed in the bioreactor prior to liquids addition because this has been determined to be the MACT and GACT level of control for bioreactors at landfills with design capacities greater than or equal to 2.5 million Mg and 2.5 million m³. However, it may not be feasible to begin operation of the control system on the day that liquids addition begins. It can take a few weeks for the biodegradation process to generate large amounts of gas, for the gas flow and composition to stabilize, to tune the gas collection system, and to achieve stable operation of a combustion control device. In recognition of this time period, we propose to require that bioreactor gas collection and control systems begin operation within 90 days after the first date of liquids addition. Bioreactors have been able to begin operation of control systems on this schedule. Furthermore, studies indicate that after 90 days of operation, a bioreactor may generate as much landfill gas as a conventional landfill does in 2 years of operation. The NSPS/EG and the November 7, 2000 proposed landfills NESHAP require gas collection and control systems to be installed and begin operation in new cells or areas of a controlled conventional landfill within 2 years after waste is first placed in that cell or area for areas that are at final grade (5 years for active areas that are still accepting waste). Since bioreactors may reach similar gas flows

in 90 days, it is consistent to require the control system in the bioreactor to begin operation within 90 days of liquids addition.

Bioreactors that are located at landfills that are existing affected sources will need time to design and install a control system. For these bioreactors, we propose to allow 3 years from the date the final landfills NESHAP are published to install and begin operating a collection and control system. This allows time for the bioreactor owner/operator to design, install, and begin operating the gas collection and control system. The 3-year period is consistent with the maximum time section 112 of the CAA allows for existing sources to achieve compliance with NESHAP. Note that if an existing source landfill is required by the NSPS/EG to install control in a bioreactor before the 3-year date, the supplemental proposal would not change the control installation date.

If an existing source landfill installs and begins to operate a bioreactor at a date later than 3 years after the final landfills NESHAP are published, then a collection and control system for the bioreactor would be required to be installed before the initiation of liquids addition. The control system would be required to begin operation within 90 days after the first date of liquids addition. The control system installation date is consistent with the CAA section 112 requirements that existing sources must be in compliance by 3 years after the effective date of the rule and must maintain continuous compliance after that date. It is also consistent with the findings of the MACT floor determination that the best performing existing sources control bioreactors from the time they initiate liquids addition. It is also reasonable because existing source landfills that choose to begin operating bioreactors more than 3 years in the future will know the bioreactor control requirements and will have sufficient time to plan for compliance by the date they initiate liquids addition. The requirement to begin operating the bioreactor control system within 90 days of initiating liquids addition is based on the rationale described in the previous paragraph for new sources.

An initial performance test to demonstrate compliance with the emissions limits would be conducted, and the results submitted within 180 days after the date the collection and control system must begin operation. This 180-day time period is generally consistent with the performance test requirements for conventional landfills

in the November 7, 2000 proposed landfills NESHAP and the NSPS/EG.

As with conventional landfills, as one area of the bioreactor is filled to capacity, waste will be placed in new cells or areas of the bioreactor over time. Conventional landfills must extend collection and control systems into new cells or areas of the landfill within 2 years of when waste is first placed in that area for areas that are at final grade, or within 5 years of when the waste is first placed in that area for active areas that are still accepting waste. For bioreactors, we propose that starting on the date control of your bioreactor is required, collection and control be extended into each new cell or area of the bioreactor prior to initiating liquids addition in that area. Timely control of each area within the bioreactor is necessary to control the higher HAP emission rates in the first 2 to 5 years of bioreactor operation. As previously noted, a bioreactor cell can very quickly (within about 90 days of operation) reach the same gas generation rate as a conventional landfill cell does in 2 years of operation. A bioreactor shortens the time of waste degradation and stabilization and, thus, the period of most of the gas generation, from 30 to 50 years for a conventional landfill to a period of 5 to 10 years for a bioreactor. Since significantly greater emissions occur in the first 5 years of bioreactor operation, controls should be extended into new bioreactor areas more quickly than in new areas of conventional landfills. This requirement is consistent with the way bioreactors are designed. Typically, horizontal gas collection systems are installed in the same area as the leachate recirculation system as the bioreactor is being filled. When the waste has been placed in the area and the leachate recirculation is started, the gas collection system will already be in place and can begin operation.

3. Why Are There Different Criteria for When Collection and Control Systems Can Be Removed From Bioreactors?

We propose to allow more timely removal of controls from bioreactor operations because bioreactor emissions rates decline more rapidly after closure than conventional landfill emissions rates. The NSPS/EG and proposed landfills NESHAP allow capping or removal of the collection and control system from a conventional landfill after it meets three criteria: The landfill is permanently closed, measured uncontrolled emissions are less than 50 Mg/yr, and the control system has been in place for at least 15 years, as contained in 40 CFR 60.752(b)(5). The NSPS/EG and proposed landfills

NESHAP also allow for nonproductive areas of a landfill to be excluded from control if these areas contribute less than 1 percent of the total amount of NMOC emissions from the landfill, as described in 40 CFR 63.759(a)(3).

We are proposing that you can choose to cap or remove controls from the bioreactor when either (1) the criteria in the NSPS/EG are met; or (2) the bioreactor is permanently closed (as defined in the NSPS/EG), liquids addition to the bioreactor has permanently ceased, and no liquids have been added to the bioreactor for at least 1 year. We are proposing this option because the 15-year control period may not be appropriate for bioreactors because bioreactor emissions are highest during the period of liquids addition, which generally stops when most biodegradation has occurred and the waste is stabilized. After this point, gas generation declines rapidly. As gas flows and HAP emissions rates decline, methane concentrations may also decline, thus requiring supplemental fuel to combust landfill gas. Waiting to remove controls until 1 year after liquids addition has ceased will ensure that the period of maximum emissions is controlled.

Our analyses show that even allowing timely removal, the total mass of emissions controlled from a bioreactor will be greater than from a conventional landfill accepting the same amount of waste. Improved control of landfill gas emissions will occur because the requirement for timely installation of controls in bioreactors is concurrent with the period when bioreactor emissions are concentrated over a shorter period of time. The timing of this requirement results in a higher proportion of emissions being collected, which allows for better control of landfill gas emissions.

If a bioreactor complies with the requirements for collection and control system removal in the proposed landfills NESHAP, it will also be considered in compliance with the NSPS or the Federal plan that implements the EG. This will avoid conflicting requirements where the proposed landfills NESHAP allow timely removal of control systems from bioreactors, whereas the NSPS or Federal plan requirements include the 15-year criterion for all landfills and could appear to continue to require bioreactor control for a longer period of time than the proposed landfills NESHAP.

4. How Did EPA Determine When the Initial Semiannual Compliance Report for Bioreactors Must Be Submitted?

The date for submittal of the initial semiannual compliance report including performance test results depends on the date that control system startup is required. For conventional landfills, the first report must be submitted within 180 days of installation and startup of the collection and control system per 40 CFR 60.757(f). For conventional landfills, the date of installation and startup are the same date. For bioreactors at new sources, and bioreactors that begin operating at existing sources after the 3-year compliance date, the proposed bioreactor provisions specify that the collection and control system must be installed by the date of liquids addition. However, the control system would not be required to start operation on the date of liquids addition. The control system must start operation within 90 days after the date liquids addition begins. The first semiannual compliance report containing the performance test results is therefore due within 180 days of the required date for control system startup (i.e., 270 days after the initiation of liquids addition). This allows the same 180-day period from the date of control system startup that is allowed for other landfills. It also allows time for the source to gain familiarity with operating the new control device, schedule and conduct a performance test, receive the analytical results, and prepare a report. After the initial report, semiannual reports will be submitted every 6 months, the same as proposed for conventional landfills.

For bioreactors at existing sources, the landfill has 3 years from the date the final rule is published to install and begin operating a gas collection and control system. For these bioreactors, the proposed date for control system installation and startup are the same date, so the initial compliance report including performance test results is due within 180 days of installation and startup of the collection and control system. This is the same as required for conventional landfills under 40 CFR 60.757(f).

The date for submitting the initial semiannual compliance report for some bioreactors is different for conventional versus bioreactor landfills, however, an owner or operator may elect to streamline subsequent semiannual reporting. The EPA expects that a number of owners or operators may be required to submit semiannual reports for both the bioreactor and the conventional portion of their landfill.

To streamline reporting for such owners or operators, EPA is proposing to allow them to delay submitting the subsequent semiannual report for the bioreactor until the initial or subsequent semiannual report is due for the conventional portion of the landfill. The owner or operator cannot delay submittal of the subsequent semiannual report for the bioreactor by more than 12 months after submittal of the initial semiannual report. For example, if the initial compliance report for the bioreactor were submitted on December 30, 2002, then the subsequent semiannual report for the bioreactor would be due on June 30, 2003. Suppose the semiannual report for the conventional portion of the landfill is due on September 30, 2003 (but no later than December 30, 2003). The owner or operator may delay submitting the semiannual report for the bioreactor from June 30 until September 30, when the report is due for the conventional portion of the landfill. Subsequent semiannual reporting for the bioreactor and the conventional portion of the landfill would be on the same schedule.

5. Why Are Moisture Content Records Needed and How Can Percent Moisture Be Determined?

To be considered a bioreactor, a liquid other than leachate must be added, and the waste must have a minimum average moisture content of 40 percent by weight. We expect that most landfills where liquid other than leachate is added will meet the definition of a bioreactor. If a landfill owner and/or operator complies with the bioreactor control requirements, they do not need to keep records of percent moisture content. If a landfill owner and/or operator adds liquid other than leachate but the portion of the landfill into which the liquid is added does not meet the 40 percent moisture criterion, they do not need to comply with the bioreactor control requirements. They must, however, keep a record of their percent moisture calculation to show that the landfill is not a bioreactor.

The proposed landfills NESHAP allow landfills to use site-specific procedures to calculate moisture content, rather than prescribing one specific method. Because of differences in climate, rainfall, waste composition, bioreactor design, and other factors, a single calculation method would not be appropriate for all landfills. Furthermore, allowing site-specific approaches minimizes the recordkeeping burden by allowing landfills to use calculations they already have available, assuming the procedures

and assumptions are documented and appropriate.

A range of appropriate methods for calculation of landfill moisture content exists. For example, a simplified mass balance approach can be used. A landfill can track the amount of incoming waste, estimate the incoming moisture content of the waste, track the amount of liquids added, and the water removed as leachate. They would then calculate the in-situ moisture content based on the initial moisture content plus the liquids added minus the liquids removed. In some cases, a more complex mass balance that considers the addition of moisture from rain and snow and the loss of moisture from evaporation is used. For example, a more complex mass balance would be appropriate where rainfall is high and the landfill cover and drainage system is not designed to prevent rain from penetrating into the waste.

Another estimation option for existing landfills that are already adding liquids includes measuring the moisture content of the waste in the landfill. However, given the heterogeneity of the waste, sampling in only one or a small number of locations may not provide a representative moisture level. For this reason, some sites may use a more intricate method of estimation, such as taking a large number of moisture content samples from throughout the landfill and analyzing them using a computer software package such as Geographical Information System. A statistical analysis of the results could provide an average percent moisture for the portion of the landfill to which liquid is added. However, it is expected that in most cases, a mass balance approach will be adequate to determine whether moisture content is below 40 percent, and comprehensive sampling will not be needed. For a landfill that has not yet started liquids addition, the sampling approach is not possible so a mass balance approach would be used.

6. Why Don't the Proposed Bioreactor Provisions Apply to Landfills That Are Closed?

It is unlikely that bioreactors would be created in landfills that are already closed. If a bioreactor were built in such a landfill, the NSPS/EG should already require control of the entire landfill, including the bioreactor if the landfill is larger than 2.5 million Mg and 2.5 million m³, because landfills larger than the design capacity cutoff would reach 50 Mg/yr NMOC emissions before their closure date based on emissions calculation procedures in the NSPS/EG. Because these closed landfills will already have installed or be in the

process of installing controls for the NSPS/EG, it is not necessary to require more timely control of bioreactors. In the less likely event that a closed landfill meeting the design capacity criteria never reached 50 Mg/yr uncontrolled NMOC emissions and never had to install controls, its emissions are already in decline so the bioreactor control provisions are not warranted.

F. What Other Issues Did EPA Consider?

The proposed bioreactor requirements apply to only those areas within a landfill that are being operated as anaerobic (including hybrid) bioreactors. The landfill continues to be subject to the NSPS or the applicable State, Tribal, or Federal plan that implements the EG and would also be subject to the landfills NESHAP requirements proposed on November 7, 2000 when they become final. This means that landfills would continue to comply with the NSPS/EG by calculating their annual NMOC emissions rates and installing collection and control systems in the conventional portions of a landfill within 30 months of the first annual emissions rate report showing that uncontrolled emissions have reached the 50 Mg/yr NMOC emissions rate cutoff.

To calculate annual emission rates for the NSPS/EG and the proposed landfills NESHAP and determine when to install control in the conventional portion of the landfill, the landfill should continue to include the entire mass of waste accepted in the landfill (including the bioreactor and the conventional areas of the landfill) when using the NSPS/EG emissions equations. This is the procedure currently required under the NSPS/EG, and it is not our intent to change the NSPS/EG requirements or to change the timing of when the conventional portions of a landfill would require control.

We considered two other options. The first option would be to require a landfill that includes both bioreactor and conventional areas to use a higher k value for the bioreactor or to measure uncontrolled emissions from the bioreactor and add them to emissions from the conventional portion of the landfill when calculating NSPS/EG control applicability. This would cause the landfill as a whole to reach 50 Mg/yr uncontrolled emissions sooner than calculated by the NSPS/EG procedures. It would, therefore, have the effect of requiring the conventional portion of the landfill to control emissions before the NSPS/EG would require control, thus penalizing landfills that use bioreactors in combination with

conventional areas. Therefore, this option was rejected. By requiring the bioreactor at such a landfill to install controls at the start of liquids addition and by not changing the emissions calculation procedure in the NSPS/EG, the proposed procedures address the problem of the increased landfill gas generation rate from the bioreactor without affecting when the conventional portion of the landfill is required to install controls.

The second option was to exclude the bioreactor from the annual NMOC emissions rate calculations required by the NSPS/EG. This would have the effect of changing the number of landfills that require control and the emissions reduction expected under the NSPS/EG. For example, a large landfill where half the area was operated as a bioreactor and half as a conventional landfill could escape control because emissions estimates from the amount of waste placed in just the conventional portion might not reach 50 Mg/yr NMOC, whereas emission estimates from the landfill as a whole would be well above 50 Mg/yr NMOC. The NSPS/EG envisioned controlling such landfills, and their control has been shown to be reasonable and cost effective. Therefore, the proposed landfills NESHAP provisions for bioreactors do not change the calculation procedures in the NSPS/EG and will have no effect on which landfills require control by the NSPS/EG, or the date that controls must be installed in the conventional portions of a landfill.

Aerobic bioreactors are a relatively new concept, and EPA knows of no full scale aerobic bioreactors in operation in the United States. A limited amount of information is available. In aerobic bioreactors, air and liquids promote aerobic decomposition of waste. The waste decomposes rapidly due to the presence of oxygen and moisture. The aerobic decomposition produces large amounts of gases including carbon dioxide. Compared to conventional landfills, the increased temperature and increased air flow through the waste may result in increased emissions rates of organic compounds (including organic HAP) soon after the aerobic bioreactor begins operation. However, aerobic landfill data are insufficient to characterize HAP emissions from this type of operation. In addition, the gas composition from a landfill operated only as aerobic bioreactor is expected to have higher levels of carbon dioxide, nitrogen, and oxygen, and significantly lower levels of methane. This may result in the gas being more difficult to safely combust, unless it is combined with a

large flow of higher-methane gas from anaerobic areas of the landfill or with other fuels.

The EPA is not expecting a significant number of aerobic bioreactors to be built in the next several years (in contrast to the trend for anaerobic bioreactors). Concerns over the increased potential for landfill fires and added power costs have deterred use of aerobic bioreactor technology. Some pilot projects have created odor concerns and in some cases are no longer being operated. Given the fact that EPA knows of no full scale aerobic bioreactors in operation in the United States and that very few pilot projects are in operation or expected to startup in the near future, EPA has concluded that it is not necessary for the supplemental proposal to address aerobic bioreactors.

Portions of a landfill that are operated as aerobic bioreactors would continue to be subject to the NSPS/EG and the proposed landfills NESHAP requirements. If a landfill that includes an aerobic bioreactor meets the design capacity and uncontrolled NMOC emissions rate criteria in the NSPS/EG, a collection and control system must be installed in the landfill, including the aerobic bioreactor area, according to the schedule in the NSPS/EG. Landfills with pilot scale aerobic bioreactors have had some success in routing emissions from the aerobic bioreactor with other landfill area emissions for control in flares.

Section 112(f) of the CAA requires EPA to evaluate residual risks and promulgate standards to address residual risks within 8 years of promulgation of the NESHAP. At that time, we will consider any new information on the prevalence and emissions of aerobic bioreactors and determine if any additional requirements are appropriate.

V. Summary of Environmental, Energy, and Economic Impacts of the Proposed Requirements for Bioreactors

We expect a positive environmental impact and negligible economic impacts from the requirements of the supplemental proposal. One reason for the small economic impact is that the supplemental proposal would require gas collection and control for only the same landfills that are already required to install collection and control systems under the NSPS/EG and the proposed landfills NESHAP. It will not change the number of landfills that must apply controls.

In the previous analyses for the NSPS/EG and proposed landfills NESHAP, it was assumed that all landfills are conventional landfills and install and

remove control systems according to the schedule in the NSPS/EG. To see if the supplemental proposal would increase emissions reductions, environmental, cost and economic impacts relative to those previously calculated, we compared the emissions reductions and costs for timely control of a bioreactor according to the schedule proposed in the supplemental proposal with the emissions reductions and costs for controlling a conventional landfill that accepts the same amount of waste and installs controls according to the NSPS/EG schedule. We found that greater emissions reductions are achieved by timely control of the bioreactor landfill. A bioreactor landfill with a design capacity of 2.5 million Mg achieves an emissions reduction of 1,770 Mg of HAP over the period of control, compared to 1,630 Mg of HAP reduction for a conventional landfill receiving the same amount of waste. The bioreactor is controlled for 13 years less than the conventional landfill, yet achieves greater emissions reductions. Similarly, a bioreactor landfill with a design capacity of 10 million Mg achieves emissions reductions of 7,300 Mg of HAP, compared to 7,040 Mg of HAP reductions for a conventional landfill receiving the same amount of waste. The bioreactor is controlled for 30 years less than the conventional landfill, yet achieves greater emissions reductions. This analysis leads to the conclusion that implementation of the supplemental proposal would achieve additional HAP emissions reductions, which will minimize any health impacts from exposure to HAP in landfill gas emissions and lead to other environmental benefits associated with reduction of other landfill gas constituents including NMOC, which contribute to photochemical formation of smog, and methane, a potent greenhouse gas. Odor problems will also be minimized.

The energy impacts of the supplemental proposal would be positive. Many bioreactors are expected to comply with the proposed rules by recovering landfill gas to generate energy. Our analysis shows that a bioreactor with a design capacity of 2.5 million Mg can generate a greater profit than a similar conventional landfill from sale of landfill gas for direct use (such as combustion in nearby boilers to provide steam to an industrial process or to heat a building). Similarly, using a combustion control device, such as an internal combustion engine, that generates electricity from the landfill gas is profitable for a 10 million Mg bioreactor, where it may not be

profitable for a similar size conventional landfill. The number of landfill gas direct use and electricity generation projects has grown in recent years, and industry commenters stated in the public comments that bioreactors provide an opportunity for economically feasible use of landfill gas to generate energy. To the extent that these energy recovery options are used instead of flares to comply with the supplemental proposal, this will result in the generation of additional electricity, offset the use of fossil fuels, and have a beneficial energy impact.

To determine if the cost of the supplemental proposal would increase the control costs previously predicted for the NSPS/EG and proposed landfills NESHAP, we analyzed the cost of control for bioreactors installing controls according to the schedule in the supplemental proposal compared to the costs for control of conventional landfills according to the schedule in the NSPS/EG. We examined costs for flares and energy generation options. The costs included capital, operating, and maintenance costs. For energy recovery options, revenues from the sale of landfill gas or electricity were included. Costs were expressed on a NPV basis because the costs of the landfill gas collection and control systems are highly variable over the life of the landfill. In addition, the timing of control system installation and the length of the control period will vary greatly based on landfill size, design, landfill gas flow rates, and gas composition. For fluctuating costs over a variable but long life of the landfill control system, this cost analysis compares the costs between various landfills and control options based on a NPV analysis. The NPV analysis removes the effects of the varying costs and lifetimes by converting them into a single present cost that is equal to the string of costs that the landfill would experience over its full lifetime.

For the flare control options, the NPV costs to control the bioreactor were slightly greater than the costs to control a conventional landfill. This is because the bioreactor would have to install control sooner, and the NPV calculation weighs earlier expenditures more heavily to account for the time value of money. However, the bioreactor NPV control cost is only about 10 percent greater than the conventional landfill control cost for all but one of the smaller landfill cases examined. For example, a bioreactor landfill with a design capacity of 2.5 million Mg, the NPV costs for a gas collection and flare system were estimated to be \$1.5 million, compared to \$1.3 million for a

conventional landfill with the same design capacity. Furthermore, bioreactors experience cost savings compared to conventional landfills due to factors such as the reduced amount of land space needed to hold the same mass of waste, and reduced leachate treatment, transportation, and disposal costs. When such differences are considered, it is significantly less costly to build a bioreactor, even with the more timely control requirements, than to build a conventional landfill. This was true for all cases examined.

The examination of energy recovery NPV costs showed that the bioreactors are less costly, or more profitable, to control than conventional landfills in all of the cases examined. In many cases, timely control of a bioreactor using an energy generation option will result in a net profit rather than a net cost. For a bioreactor landfill with a design capacity of 10 million Mg that controls emissions by using an internal combustion engine that generates electricity for sale to the power grid, the revenues from the sale of electricity balance the costs of the gas collection and control system resulting in an estimated NPV cost savings (or net revenue) of approximately \$0.1 million. A conventional landfill with the same design capacity is estimated to incur an NPV cost of approximately \$5 million. Smaller bioreactors that can control emissions by collecting landfill gas and delivering it to a nearby industry, commercial establishment, or institution for direct use in a boiler, process heater, or other energy recovery system can also realize a greater net revenue than similar size conventional landfills.

Given these results, we conclude that the supplemental proposal would not increase the costs of control for most landfills compared to the previous cost analyses, and some landfills with bioreactors will experience reduced control costs. We expect the number of bioreactors to increase over the next few years given their potential environmental and economic benefits and pending regulatory clarifications. Overall, the supplemental proposal would have minimal economic impacts and may in fact have an overall beneficial economic impact. Additional information on this analysis, including additional cases examined, HAP emissions reductions, and NMOC emissions reductions are contained in Docket No. A-98-28.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant," and therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(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 the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the supplemental proposal is not a "significant regulatory action" because it will not have an annual effect on the economy of \$100 million or more.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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" are 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."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue

a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The supplemental proposal for MSW landfills will 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. The EPA has concluded that the supplemental proposal may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, the supplemental proposal does not impose any additional control costs or result in any additional control requirements above those considered during promulgation of the 1996 EG/NSPS. In developing the 1996 EG/NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of that rulemaking. Because the control requirements of the supplemental proposal are substantially the same as those developed in 1996, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need for the specific control requirements included in both the EG/NSPS and the supplemental proposal, see the preamble to the 1996 EG/NSPS (60 FR 9918, March 12, 1996). Thus, the requirements of section 6 of the Executive Order do not apply to the supplemental proposal.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) took effect on January 6, 2001, after publication of the proposed landfills NESHAP. 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 Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

The supplemental proposal does not have tribal implications. It 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, the requirements of Executive Order 13175 do not apply to the supplemental proposal.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the supplemental proposal from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation.

The supplemental proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the supplemental proposal has been determined to be not "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The supplemental proposal is not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the supplemental proposal does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The EPA expects the requirements in the supplemental proposal to have a negligible economic impact. Thus, the supplemental proposal is not subject to the requirements of section 202 and 205 of

the UMRA. In addition, the EPA has determined that the supplemental proposal contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the supplemental proposal does not unfairly apply to small governments. Therefore, the supplemental proposal is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA) As Amended By the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's supplemental proposal on small entities, small entity is defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by NAICS codes 562212 and 924110 with annual receipts less than 10 million dollars; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's supplemental proposal for MSW landfills on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE). The supplemental proposal will not impose any requirements on small entities. In gathering available data on the owners of the ten bioreactor projects that are the population of sources used to identify the MACT floor for the supplemental proposal, we found that none of the ten projects were owned by small entities that met the SBA definition. Given that the landfill capacity of no other bioreactor project from the available data was identified to be larger than the landfill capacity exemptions, these data provide evidence to support the determination that there is no SISNOSE associated with this action.

Although no small entities were identified, the supplemental proposal would impose minimal economic impact on small entities because controls for bioreactor operations would be applied sooner than under the NSPS/EG. In addition, there may be cost savings for most of the sources that install bioreactors as compared to using conventional landfill operations. Also, the design capacity exemptions of 2.5 million Mg and 2.5 million m³ excludes smaller landfills that can least afford the costs of collection and control systems, which will include many landfills owned by small businesses and small municipalities.

We continue to be interested in the potential impacts of the supplemental proposal on small entities and welcome comments on issues related to such impacts. For more information on potential impacts to small entities, please consult the economic impact analysis for the proposed landfills NESHAP in the public docket.

H. Paperwork Reduction Act

An Information Collection Request (ICR) document has been prepared for the November 7, 2000 proposed landfills NESHAP by EPA (ICR No. 1938.01) and submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

The supplemental proposal uses the same technical standards as the proposed rule and does not introduce new standards. Therefore, the requirements of the NTTAA do not apply to the supplemental proposal.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Christine Todd Whitman,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

2. Section 63.1935, as proposed at 65 FR 66683 on November 7, 2000, is amended by designating the existing paragraph in this section as paragraph (a) and adding new paragraph (b) to read as follows:

§ 63.1935 Am I subject to this subpart?

* * * * *

(b) If you own or operate a major or area source MSW landfill with a design capacity greater than or equal to 2.5

million Mg and 2.5 million m³ that includes a bioreactor, as defined in § 63.1990, then you are subject to this subpart.

3. Subpart AAAA, as proposed at 65 FR 66684 on November 7, 2000, is amended by adding § 63.1947 to read as follows:

§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

If you own or operate a bioreactor located at a landfill that is not permanently closed as of the date of publication of the final rule in the **Federal Register** and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³, then you must install and operate a collection and control system that meets the criteria in 40 CFR 60.752(b)(2), subpart WWW; the Federal plan; or EPA-approved and effective State plan according to the schedule specified in paragraph (a) or (b) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 90 days after initiating liquids addition.

(b) If your bioreactor is at an existing affected source and your bioreactor is not already required to install a gas collection and control system under 40 CFR part 60, subpart WWW; the Federal plan; or EPA-approved and effective State plan, then you must install and begin operating the gas collection and control system for the bioreactor within 3 years after the date of publication of the final rule in the **Federal Register**.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than 3 years after the date of publication of the final rule in the **Federal Register**, then you must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 90 days after initiating liquids addition.

4. Subpart AAAA, as proposed at 65 FR 66684 on November 7, 2000, is amended by adding § 63.1952 to read as follows:

§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

If you own or operate a bioreactor, you are no longer required to comply with the requirements of this subpart provided you meet the conditions of either paragraph (a) or (b) of this section.

(a) Your affected source meets the control system removal criteria in 40 CFR 60.752(b)(v), subpart WWW, or the bioreactor meets the criteria for a nonproductive area of the landfill in 40 CFR 60.759(a)(3)(ii), subpart WWW.

(b) The bioreactor portion of the landfill is a closed landfill as defined in 40 CFR 60.751, subpart WWW, you have permanently ceased adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in 40 CFR 60.757(d), subpart WWW.

(c) Compliance with the bioreactor control removal provisions in this section constitute compliance with 40 CFR part 60, subpart WWW, or the Federal plan, whichever applies to your bioreactor.

5. Section 63.1955, as proposed at 65 FR 66684 on November 7, 2000, is amended by adding paragraph (c) to read as follows:

§ 63.1955 What requirements must I meet?

* * * * *

(c) If you own or operate a bioreactor that is located at an MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³, then you must meet the requirements of paragraph (a) and the additional requirements in paragraphs (c)(i) and (ii) of this section.

(i) You must comply with the general provisions specified in Table 1 of this subpart and in § 63.1960 through § 63.1985 starting on the date you are required to install the gas collection and control system.

(ii) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area instead of the schedule in 40 CFR 60.752(b)(2)(ii)(A)(2).

6. Section 63.1980, as proposed at 65 FR 66684 on November 7, 2000, is amended by adding new paragraphs (c) through (g) to read as follows:

§ 63.1980 What records and reports must I keep and submit?

* * * * *

(c) For bioreactors at new affected sources, you must submit the initial

semiannual compliance report and performance test results described in 40 CFR 60.757(f), subpart WWW, within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2).

(d) For bioreactors at existing affected sources, you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f), subpart WWW, within 180 days after the compliance date specified in § 63.1947(b), unless you have previously submitted a compliance report for the bioreactor required by 40 CFR part 60, subpart WWW; the Federal plan; or an EPA-approved and effective State plan.

(e) For bioreactors that are located at existing affected sources but do not initiate liquids addition until later than the compliance date in § 63.1947(b), you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f), subpart WWW, within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(c) of this subpart.

(f) If you must submit a semiannual compliance report for a bioreactor as well as a semiannual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semiannual compliance report for the bioreactor according to paragraphs (f)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semiannual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semiannual compliance report for the bioreactor until the date the initial or subsequent semiannual compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semiannual compliance report by no more than 12 months after the due date for submitting the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f), subpart WWW, for the bioreactor. The report shall cover the time period since the previous semiannual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semiannual report, all subsequent semiannual reports for the bioreactor must be submitted every 6 months on the same date the semiannual report for the conventional portion of the landfill is due.

(g) If you add any liquids other than leachate in a controlled fashion to the waste mass, and you do not comply with the bioreactor requirements in §§ 63.1947, 63.1955(c) and 63.1980(c) through (f), you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids

addition, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions.

7. Section 63.1990, as proposed at 65 FR 66685 on November 7, 2000, is amended by adding in alphabetical order the definition of "bioreactor" as follows:

§ 63.1990 What definitions apply to this subpart?

* * * * *

Bioreactor means a municipal solid waste landfill or portion of a municipal solid waste landfill where any liquid other than leachate is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of 40 percent by weight or greater.

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[FR Doc. 02-12845 Filed 5-22-02; 8:45 am]

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Federal Register

**Thursday,
May 23, 2002**

Part VI

Environmental Protection Agency

40 CFR Part 60

**Standards of Performance for Municipal
Solid Waste Landfills; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60****[AD-FRL-7215-4]****RIN 2060-AJ41****Standards of Performance for Municipal Solid Waste Landfills****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; amendments.

SUMMARY: The EPA is proposing clarifications to the final rule entitled "Standards of Performance for Municipal Solid Waste Landfills" (61 FR 9905, March 12, 1996). We propose to clarify who is responsible for compliance activities conducted on-site; to clarify what constitutes treated landfill gas; to correct omission of an exemption for specific boilers and process heaters from the initial performance test; and to address compliance activities conducted by third parties with systems located off-site.

The proposed amendments will not change the basic control requirements of the final rule or the level of health protection it provides, but will improve implementation, compliance, and regulatory flexibility while reducing unnecessary regulatory burden.

While the proposed amendments would amend the "Standards of Performance for Municipal Solid Waste Landfills," they would also serve to amend the emission guidelines (EG) for existing municipal solid waste (MSW) landfills because the EG incorporate the provisions of the "Standards of Performance for Municipal Solid Waste Landfills."

DATES: *Comments.* Submit comments on or before July 22, 2002.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing by June 12, 2002, a public hearing will be held on June 24, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-88-09, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-88-09, U.S. EPA, 401 M Street, SW, Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A-88-09 contains supporting information used in developing the new source performance standards (NSPS). The docket is located at the U.S. EPA, 401 M Street SW, Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air and Radiation Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5256, facsimile number (919) 541-0246, electronic mail (e-mail) address: laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION: *Comments.* Comments may be submitted by e-mail to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® Corel 8 file format. All comments submitted in electronic form must note the docket number: Docket No. A-88-09. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration and retain the confidentiality of that information must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Ms. Michele Laur, c/o OAQPS Document Control Officer, U.S. EPA, (C404-02), 4930 Old

Page Road, Research Triangle Park, 27709.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins, Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact JoLynn Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the NSPS. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this action are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. Categories and entities potentially regulated by today's proposed amendments include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.
State, local, and Tribal government agencies	562212	4953	Solid waste landfills; Air and water resource and solid waste management.
	924110		

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 60.32c of subpart Cc, or in § 60.750 of subpart WWW. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On March 12, 1996 (61 FR 9905), the U.S. EPA promulgated the emission guidelines (EG) for existing municipal solid waste (MSW) landfills and the NSPS for new or modified MSW landfills as subparts Cc and WWW of 40 CFR part 60. The expressed goal of the EG and NSPS is to control landfill gas emissions from the largest landfills to protect human health and the environment.

The control of landfill gas results in emissions reductions of over 30 volatile organic compounds and air toxics such as toluene, benzene, and vinyl chloride. The reduction of these emissions has direct and indirect health benefits as well as environmental benefits. In addition, the control of landfill gas results in reductions of methane gas emissions which not only reduces the potential for fires and explosions near landfills but also reduces the potential for global climate change related to methane gas emissions. Another benefit is the reduction of odor problems which reduces the potential for local property de-valuation and poorer quality of life for local residents.

The EG and NSPS require large landfills (at least 2.5 million megagrams and 2.5 million cubic meters in size) with estimated nonmethane organic compound (NMOC) emissions at or above a specified limit (at least 50 megagrams per year) to collect and control or treat landfill gas. The NSPS and EG provide landfill owners or operators with some degree of flexibility to achieve compliance, allowing them to incorporate site specific factors into the

design of the collection and control or treatment systems, as long as the systems meet specific performance standards.

Recent implementation activity has shown a need for clarification of some issues. Today's proposed amendments are submitted to resolve those issues.

II. What Amendments Are We Making and Why?

A. Definition of Landfill Owner/Operator

The NSPS do not contain a specific definition for MSW landfill owners/operators. In the absence of a specific definition, relevant definitions in the NSPS and in the general provisions apply. This lack of a specific definition for MSW landfill owners/operators may have confused some with regard to who is responsible for compliance when collection and control or treatment of landfill gas is performed on-site.

To facilitate implementation and improve compliance, we propose to amend § 60.751 of the NSPS by adding a landfill-specific definition for MSW landfill owners/operators. This landfill-specific definition will identify the MSW landfill owners/operators as entities that own or operate the landfill or any stationary equipment located at the landfill that is used in the collection, control, or treatment of landfill gas. The inclusion of owners/operators of landfill gas collection, control, or treatment equipment located on-site in the definition of "MSW landfill owner/operator" is consistent with our historical approach and with the "owner/operator" and "affected facility" definitions found in the general provisions to 40 CFR part 60. Today's proposed amendments should help to more clearly identify entities responsible for compliance with the NSPS.

B. Definitions for Treated Landfill Gas, Treatment System, and Untreated Landfill Gas, and Clarification of the Treatment Standard

The NSPS allow landfill owners/operators the option of achieving compliance by routing collected landfill

gas to a treatment system prior to subsequent sale or use. Once landfill gas is treated, facilities that buy or use the gas have no further obligations related to the NSPS.

The NSPS do not clearly define landfill gas treatment. In the absence of a clear definition, a range of activities has been construed as constituting treatment. This absence of a clear treatment definition may have hindered implementation of this option, reduced rule flexibility, and reduced full use of this option.

We propose to amend § 60.751 of the NSPS by adding a definition for treatment system. The proposed definition for treatment system specifies that the system must filter, de-water and compress landfill gas. At a minimum, the system must filter landfill gas using a dry filter or similar device (e.g., impaction, interception or diffusion device). The filter should reduce particulate matter in the gas stream. This will prolong the life of the combustion device and decrease the buildup of material on combustion device internals, which will support good combustion. Good combustion is essential to ensuring the proper destruction of NMOC. In addition, the system must de-water landfill gas using chillers or other dehydration equipment. The de-watering equipment should reduce moisture content of the gas, which will maintain low water content in the gas and will prevent degradation of combustion efficiencies. Finally, the system must compress landfill gas using gas blowers or similar devices. Compression should further reduce the moisture content of the gas and raise gas pressure to the level required by the end use combustion device. This definition of treatment was chosen because we believe it cleans up the gas to the extent it can be readily combusted in gas-to-energy projects. It also reflects current practices at many facilities and fosters expanded beneficial combustion of landfill gas.

We recognize that some landfill gas-to-energy projects may use a different definition of treatment than we are proposing. We request data from them

that show achievement of the expected emissions reductions using a different treatment definition. If these facilities submit data that show different approaches to treatment, or different levels of treatment will sufficiently clean up the landfill gas so it is readily combustible, the data will be considered in development of the final rule.

Today's proposed amendment to § 60.751 of the NSPS reduces burden on States and Regions currently performing case-by-case determinations related to the adequacy of treatment options being employed across the Nation. It also serves to clarify the treatment issue for the regulated community so better informed decisions can be made about compliance options. It fosters the use of treated landfill gas, a renewable energy source, as an alternative to combustion of fossil fuels which can generate greater emissions. It will improve implementation and compliance, as well as increase regulatory flexibility.

To implement the proposed treatment definition, we also propose to amend § 60.751 of the NSPS by adding definitions for treated landfill gas and untreated landfill gas. The proposed definitions for treated and untreated landfill gas differentiate treated landfill gas, a gas that is not subject to requirements in the landfills NSPS, from untreated landfill gas. In addition, we propose to amend § 60.752(b)(2)(iii)(C) of the NSPS to specify that to achieve compliance with this section, landfill gas must be processed in a system that meets the treatment system definition in today's proposed amendment. We also propose to amend this section to clarify that venting of treated landfill gas to the ambient air is not permitted under this regulation.

C. Boiler and Process Heater Performance Test Exemption

The NSPS currently require landfill owners/operators to conduct an initial performance test on all enclosed combustion devices used to control landfill gas emissions. The purpose of that test is to verify control device compliance with the standard and to determine the control device operating temperature that corresponds to compliance with the standard. Following the performance test, landfill owners/operators must monitor and maintain the control device operating temperature within a specified range to ensure continuous compliance.

Requiring a performance test on boilers and process heaters with design heat input capacities of 44 megawatts (MW) or greater represents an unnecessary burden resulting in

additional cost to industry without additional emissions reductions or other environmental benefits. This conclusion is based on our determination that large boilers and process heaters consistently achieve the required level of control. Therefore, such units have historically been exempt from performance tests. In addition, the NSPS do not require temperature monitoring to evaluate continuous compliance for these large boilers and process heaters.

We propose to amend § 60.752(b)(2)(iii)(B) to exempt owners/operators of boilers and process heaters with design input capacities of 44 MW or greater from the requirement to conduct an initial performance test.

D. Allowance for Off-Site Control or Treatment Option

At the time the NSPS were developed, off-site control or treatment of landfill gas was not considered as an option. Therefore, the NSPS do not address off-site control or treatment of landfill gas.

Since development and implementation of the NSPS, landfill owners/operators have sought new and innovative ways to operate landfills while maintaining compliance with the NSPS. Some of these innovative approaches involve the control or treatment of landfill gas by entities operating equipment located off-site. Since these operations are currently not addressed, the flexibility to engage in innovative control and use of landfill gas is hindered.

In developing the NSPS, we wanted to allow landfill owners/operators the flexibility to achieve compliance taking into account site-specific conditions. The option to transfer landfill gas for off-site control or treatment by a third party would provide landfill owners/operators greater flexibility in complying with the rule. The proposed option would allow transfer of control or treatment responsibility in specified circumstances without holding the landfill owners/operators responsible for the actions of another party. This approach is consistent with our historical approach to similar waste stream transfers in other rules such as the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater. It would also facilitate the use of landfill gas as a renewable energy source while achieving emission reductions of methane, a global climate change gas, which would benefit public health, the environment, and the regulated community.

We propose to amend § 60.752 of the NSPS to allow landfill owners/operators to transfer untreated landfill gas off-site for control or treatment provided the transferee certifies to EPA (and provides a copy to the owner/operator) that it will control or treat the landfill gas in accordance with the NSPS provisions, including providing for either a backup control device should the primary control or treatment system malfunction or shutdown, or a mechanism for shutoff of landfill gas flow to the off-site facility. During times when landfill gas flow to the off-site facility is shutdown, the owner/operator of the landfill is responsible for complying with the rule.

III. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant," and therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(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 the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed amendments are not a "significant regulatory action" because they will not have an annual effect on the economy of \$100 million or more and they do not impose any additional control requirements above the 1996 NSPS. The EPA considered the 1996 NSPS to be "significant" because they were expected to have an annual effect on the economy in excess of \$100 million, and we submitted the 1996 NSPS to OMB for review. Today's proposed amendments are projected to have no impact above the 1996 NSPS. Consequently, today's proposed

amendments were not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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."

Today's proposed amendments do not have federalism implications. They will 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.

Today's proposed amendments do not impose additional costs or result in additional control requirements above those considered during promulgation of the 1996 landfills NSPS. In developing the 1996 landfills NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of that rulemaking. Because the control requirements of today's proposed amendments are the same as those developed in 1996, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need for the specific control requirements included in the NSPS, see the preamble to the 1996 NSPS (61 FR 9905, March 12, 1996). Thus, Executive Order 13132 does not apply to today's proposed amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), 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 the Indian tribes."

Today's proposed amendments do not have tribal implications. They 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. Today's proposed amendments do not impose additional costs or result in additional control requirements above those considered during promulgation of the 1996 NSPS. In addition, today's proposed amendments do not significantly or uniquely affect the communities of Indian tribal governments. Thus, the requirements of Executive Order 13175 do not apply to today's proposed amendments.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on today's proposed amendments from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation.

Today's proposed amendments are not subject to Executive Order 13045

because they are based on technology performance and not on health and safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. In addition, today's proposed amendments are not economically significant as defined in Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's proposed amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's proposed amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that today's proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they consist of new definitions and clarifications and do not impose new costs on government entities or the private sector. Therefore, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA 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. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by NAICS codes 562212 and 924110 with annual receipts less than \$10 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's proposed amendments. Today's

proposed amendments clarify the applicability of control requirements in the NSPS and do not include provisions that create a new burden for regulated entities.

Today's proposed amendments do not increase the stringency of the NSPS, nor do they add additional control requirements. Today's proposed amendments reduce the control, monitoring, recordkeeping, and reporting requirements of the promulgated rule under specific conditions for some entities.

H. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the landfills NSPS and was submitted to and approved by OMB. A copy of this ICR (OMB control number 1557.03) may be obtained from Sandy Farmer, by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by calling (202) 260-2740; or by email at: farmer.sandy@epa.gov. You may also download a copy from the policy website at <http://www.epa.gov/icr>.

Today's proposed amendments to the NSPS will have no impact on the information collection burden estimates made previously. Today's proposed amendments consist of new definitions and clarifications of requirements. Consequently, the ICR has not been revised.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113; 15 U.S.C. 272 note), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

Today's proposed amendments do not involve new technical standards; thus, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Christine Todd Whitman,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart WWW—[AMENDED]

2. Section 60.751 is amended by adding in alphabetical order the definitions of MSW landfill owner/operator, treated landfill gas, treatment system and untreated landfill gas, to read as follows:

§ 60.751 Definitions.

* * * * *

Municipal solid waste landfill owner/operator means any entity that owns or operates a municipal solid waste landfill or any stationary equipment located on the same property as a municipal solid waste landfill facility that is used to collect, control or treat landfill gas.

* * * * *

Treated landfill gas means landfill gas processed in a treatment system according to this subpart.

Treatment system means a system that filters, de-waters and compresses landfill gas.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

* * * * *

3. Section 60.752 is amended by revising paragraphs (b)(2)(iii)(B) and (C), and by adding paragraphs (b)(2)(iii)(D), (D)(1) through (4) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(B) A control system designed and operated to reduce NMOC by 98 weight percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or to reduce the outlet NMOC concentration to less than 20 parts per million by volume (ppmv), dry basis as hexane at 3 percent oxygen. The reduction efficiency or ppmv shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test

methods specified in § 60.754(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(1) * * *

(2) * * *

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use as a fuel for combustion. Landfill gas sold or used as a fuel for combustion shall be treated in a treatment system as defined in § 60.751. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this rule, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. The owner/operator of the landfill gas treatment system must ensure compliance with these requirements. The owner/operator of a combustion device who uses or purchases treated landfill gas for fuel in a combustion device shall be exempt from further compliance with this subpart. Since the treatment option is only valid when treated landfill gas is sold or used as a fuel in a combustion device, the gas must be used as a fuel, and venting of treated landfill gas to the ambient air is not allowed under this option.

(D) The landfill owner/operator who routes untreated landfill gas for sale or use shall be exempt from the requirements of paragraphs (b)(2)(iii)(A) and (B) of this section if the conditions in paragraphs (b)(2)(iii)(D)(1) through (4) of this section are met:

(1) The landfill owner/operator transferring or selling untreated landfill

gas to an off-site operation owned or operated by a third party for treatment or for combustion as a fuel must include a notice with the transfer or sale of the untreated landfill gas. The notice must state that the untreated landfill gas is to be treated or combusted in accordance with the provisions of this subpart.

When the transfer or sale is continuous or ongoing, the notice must be submitted to the third party operator initially and whenever there is a change in the required treatment or combustion standards. These notices must be retained by the landfill owner/operator as specified in § 60.758(g).

(2) The landfill owner/operator may not transfer or sell the untreated landfill gas unless the transferee has submitted to EPA a written certification that the transferee will manage and treat or combust the untreated landfill gas received from the affected facility subject to the requirements of this subpart in accordance with the requirements in §§ 60.752 through 60.758. The certifying entity may revoke the written certification by sending a written statement to EPA and the landfill owner/operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (b)(2)(iii)(D)(2). Upon expiration of the notice period, the landfill owner/operator may not transfer or sell the untreated landfill gas to the third party operation.

(3) The third party/certifying entity must provide written certification to EPA that it accepts responsibility for compliance with the regulatory provisions listed in paragraph (b)(2)(iii)(D)(2) of this section with respect to any transfer or sale of

untreated landfill gas covered by the written certification. Failure to abide by any of the provisions with respect to such transfers or sales may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of the provisions by owners or operators of affected facilities.

(4) Written certification and revocation statements to EPA from the transferees of untreated landfill gas must be signed by a responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office. Such written certifications are not transferable by the third party.

* * * * *

4. Section 60.758 is amended by adding paragraph (g) to read as follows:

§ 60.758 Recordkeeping requirements.

* * * * *

(g) The landfill owner or operator transferring or selling untreated landfill gas in accordance with § 60.752(b)(2)(iii)(D)(1) shall keep a record of the notice sent to the third party operator stating that the untreated landfill gas is required to be managed and treated or combusted in accordance with the provisions of this subpart. This record shall be maintained for as long as the third party continues to accept landfill gas as specified in the third party's certification. Upon termination of the certification by the third party, this record must be maintained for 5 years.

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Federal Register

**Thursday,
May 23, 2002**

Part VII

Federal Trade Commission

**16 CFR Part 314
Standards for Safeguarding Customer
Information; Final Rule**

FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084 AA87

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is issuing a final Safeguards Rule, as required by section 501(b) of the Gramm-Leach-Bliley Act ("G-L-B Act" or "Act"), to establish standards relating to administrative, technical and physical information safeguards for financial institutions subject to the Commission's jurisdiction. As required by section 501(b), the standards are intended to: Ensure the security and confidentiality of customer records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

EFFECTIVE DATE: This rule is effective on May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Laura D. Berger, Attorney, Division of Financial Practices, (202) 326-3224.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- A. Background
- B. Overview of Comments Received
- C. Section-by-Section Analysis
- D. Paperwork Reduction Act
- E. Regulatory Flexibility Act

Section A. Background

On November 12, 1999, President Clinton signed the G-L-B Act (Pub. L. 106-102) into law. The purpose of the Act was to reform and modernize the banking industry by eliminating existing barriers between banking and commerce. The Act permits banks to engage in a broad range of activities, including insurance and securities brokering, with new affiliated entities. Subtitle A of Title V of the Act, captioned "Disclosure of Nonpublic Personal Information," limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose certain privacy policies and practices with respect to its information sharing with both affiliates and nonaffiliated third parties. On May 12,

2000, the Commission issued a final rule, Privacy of Consumer Financial Information, 16 CFR part 313, which implemented Subtitle A as it relates to these requirements (hereinafter "Privacy Rule").¹ The Privacy Rule took effect on November 13, 2000, and full compliance was required on or before July 1, 2001.

Subtitle A of Title V also requires the Commission and other federal agencies to establish standards for financial institutions relating to administrative, technical, and physical safeguards for certain information.² See 15 U.S.C. 6801(b), 6805(b)(2). As described in the Act, the objectives of these standards are to: (1) Ensure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. See 15 U.S.C. 6801(b)(1)-(3). The Act does not require all of the agencies to coordinate in developing their safeguards standards, and does not impose a deadline to establish them.³ Although the Act permits most of the agencies to develop their safeguards standards by issuing guidelines, it requires the SEC and the Commission to proceed by rule.⁴

On September 7, 2000, the Commission issued for publication in the **Federal Register** a Advanced Notice of Proposed Rulemaking ("the ANPR") on the scope and potential requirements of a Safeguards Rule for the financial institutions subject to its jurisdiction.⁵ The Commission received thirty comments in response to the ANPR. Based on these comments, as well as the safeguards standards already issued by

the other GLB agencies, the Commission issued a Notice of Proposed Rulemaking respecting Standards for Safeguarding Customer Information ("the proposal" or "the Proposed Rule") on August 7, 2001.⁶ In response to the proposal, the Commission received forty-four comments from a variety of interested parties. The Commission now issues a final rule governing the safeguarding of customer records and information for the financial institutions subject to its jurisdiction ("Safeguards Rule").

Like the proposal, the Final Rule requires each financial institution to develop a written information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. As described below, each information security program must include certain basic elements to ensure that it addresses the relevant aspects of a financial institution's operations and that it keeps pace with developments that may have a material impact on its safeguards. In developing the Final Rule, the Commission carefully weighed the comments, including concerns expressed about the ability of smaller and less sophisticated financial institutions to meet the Rule's requirements. It also sought to ensure that the Rule mirrored the requirements of the guidelines already established by the NCUA and the other banking agencies (collectively, "the Banking Agency Guidelines"),⁷ with adjustments as needed to clarify the Rule's scope and accommodate the diverse range of entities covered by the Commission's Rule. The Commission believes that the Final Rule strikes an appropriate balance between allowing flexibility to financial institutions and establishing standards for safeguarding customer information that are consistent with the Act's goals. As described below, the Commission will issue educational materials in connection with the Rule in order to assist businesses—and in particular, small entities—to comply with its requirements without imposing undue burdens.

¹ The rule was published in the **Federal Register** at 65 FR 33646 (May 24, 2000).

² The other agencies responsible for establishing safeguards standards are: the Office of the Comptroller of the Currency ("OCC"); the Board of Governors of the Federal Reserve System ("Board"); the Federal Deposit Insurance Corporation ("FDIC"); the Office of Thrift Supervision ("OTS"); the National Credit Union Administration ("NCUA"); the Secretary of the Treasury ("Treasury"); and the Securities and Exchange Commission ("SEC").

³ By contrast, section 504 of the Act required the Agencies to work together to issue consistent and comparable rules to implement the Act's privacy provisions.

⁴ The NCUA and the remaining banking agencies—the OCC, the Board, the FDIC, and OTS—have already issued final guidelines that are substantively identical. 66 FR 8152 (Jan. 30, 2001); 66 FR 8616 (Feb. 1, 2001). The SEC also adopted a final safeguards rule as part of its Privacy of Consumer Financial Information Final Rule (hereinafter "SEC rule"). See www.sec.gov/rules/final/34-42974.htm (June 29, 2000).

⁵ 65 FR 54186.

⁶ 66 FR 41162. In addition to considering the Banking Agency Guidelines, the Commission also considered the Final Report that was issued by the Federal Trade Commission Advisory Committee on Online Access and Security on May 15, 2000 ("Advisory Committee's Report" or "ACR"). Although the Advisory Committee's Report addressed security only in the online context, the Commission believes that its principles have general relevance to information safeguards.

⁷ See *supra* n.4.

Section B. Overview of Comments Received

The comments received were submitted by a variety of interested parties:⁸ twenty-eight were from trade or other associations or companies related to financial or Internet-related services;⁹ six were from corporations or associations related to higher education or the funding of student loans;¹⁰ five were from individuals;¹¹ three were from information security companies;¹² two were from consumer reporting agencies;¹³ and one was from a non-profit association of consumer agencies.¹⁴

The majority of commenters supported the proposal overall, citing its flexibility¹⁵ and similarity to the Banking Agency Guidelines.¹⁶ However, as discussed below, commenters expressed different views on issues concerning the Rule's scope—in particular, whether financial institutions should be responsible for the safeguards of their affiliates and service providers and whether the Rule should apply to a financial institution

that has no customer relationship but receives customer information from another financial institution. In addition, a number of commenters asked that compliance with alternative standards be deemed compliance with the Rule and/or sought to exclude certain entities from the Rule's definition of "service provider." Finally, numerous commenters urged that the Commission provide guidance to businesses—particularly smaller businesses—on how to comply with the Rule without incurring undue expense.¹⁷ As discussed in detail below, comments on all of these issues were instrumental in shaping the Final Rule.

Additional comments, and the Commission's responses thereto, are discussed in the following Section-by-Section analysis.

Section C. Section-by-Section Analysis

Consistent with the proposal, the Safeguards Rule will be part 314 of 16 CFR, to be entitled "Standards for Safeguarding Customer Information." This Part will follow the Privacy Rule, which is contained in part 313 of 16 CFR. The following is a section-by-section analysis of the Final Rule.

Section 314.1: Purpose and Scope

Paragraph 314.1(a) states that the Rule is intended to establish standards for financial institutions to develop, implement and maintain administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. This paragraph also states the statutory authority for the proposed Rule. No comments addressed this provision, and the Commission has made no changes to it.

Paragraph 314.1(b) sets forth the scope of the Rule, which applies to the handling of customer information by all financial institutions over which the FTC has jurisdiction. Because, as noted below, "financial institution" is defined as it is in section 509(3)(A) of the Act and the Privacy Rule, the Rule covers a wide range of entities, including: non-depository lenders; consumer reporting agencies; debt collectors; data processors; courier services; retailers that extend credit by issuing credit cards to consumers; personal property or real estate appraisers; check-cashing businesses; mortgage brokers, and any other entity that meets this definition.¹⁸

Consistent with the proposal, the Safeguards Rule covers any financial institution that is handling "customer information"—i.e., not only financial institutions that collect nonpublic personal information from their own customers, but also financial institutions that receive customer information from other financial institutions.

Comments were split on whether the Rule should apply to customer information that a financial institution receives from another financial institution. A number of commenters agreed that such recipients should be required to maintain safeguards, citing the added protections provided by this requirement.¹⁹ However, one of these commenters expressed concern that a recipient financial institution could be subject to multiple safeguards standards or even required to prepare multiple written safeguards plans if that financial institution also acts as a service provider or is subject to other laws, such as the Fair Credit Reporting Act, that impose confidentiality requirements.²⁰ In addition, some commenters opposed covering recipients on the grounds that such coverage is: (1) Beyond the intent of section 501(a), which refers to a financial institution's obligation to "its customers;" (2) unnecessary in light of the Rule's separate treatment of service providers and affiliates; and/or (3) too burdensome.²¹

After considering the comments, the Commission has determined that covering recipient financial institutions is consistent with the purpose and language of the Act. The Commission believes that imposing safeguards obligations as to customer information that a financial institution receives about another institution's customers is the most reasonable reading of the statutory language and clearly furthers the express congressional policy to

institution that is significantly engaged in financial activities is a financial institution.

Additional examples of financial institutions are provided in section 313.3(k)(2) of the Privacy Rule.

¹⁹ See, e.g., Equifax at 1–2; Intuit at 2; NIADA at 2; TGSL at 1.

²⁰ Equifax at 2.

²¹ See, e.g., ACA at 2–3; CDIA at 3; Experian at 2; Mastercard at 2–3; NACAA at 2–3; NRF at 3. In addition, one comment stated that numerous financial institutions that do not have customer relationships of their own could be swept into the Rule in this fashion (Visa at 4). Although no commenters identified the types of financial institutions that are likely to be so affected, the Commission envisions that such entities could include consumer reporting agencies, debt collectors, independent check cashers, automated teller machine operators, and other businesses that obtain customer information from other financial institutions to process customer data, facilitate customer transactions, or carry out transactions in a consumer context.

⁸ These comments are available on the Commission's Web site, at www.ftc.gov.

⁹ ACA International ("ACA"); America's Community Bankers ("ACB"); Associated Credit Bureaus, now renamed the Consumer Data Industry Association ("CDIA"); BITS/Financial Services Roundtable ("BITS"); Commerce Bankshares, Inc.; Credit Union Nat'l Ass'n ("CUNA"); Council of Ins. Agents and Brokers; Debt Buyers Ass'n ("DBA"); Ernst & Young LLP ("Ernst & Young"); Financial Planning Ass'n ("FPA"); Household Finance Corporation ("Household"); Independent Community Bankers of America ("ICB"); Independent Ins. Agents of America ("Indep. Ins. Agents"); Intuit Inc. ("Intuit"); Information Technology Ass'n of America ("ITAA"); MasterCard International ("MasterCard"); Nat'l Ass'n of Indep. Insurers ("NAII"); Nat'l Ass'n of Mutual Ins. Cos. ("NAMIC"); Nat'l Automotive Dealers Ass'n ("NADA"); Nat'l Retail Federation ("NRF"); Navy Federal Credit Union ("NFCU"); Nat'l Indep. Automobile Dealers Ass'n ("NIADA"); Navy Federal Financial Group ("NFFG"); North American Securities Administrators Ass'n, Inc. ("NASAA"); Ohio Credit Union League ("OCUL"); Oracle Corporation ("Oracle"); Software & Information Industry Ass'n ("SIIA"); Visa USA, Inc. ("Visa").

¹⁰ American Council on Education ("ACE"); Education Finance Council and the National Council of Higher Education Loan Programs; Nat'l Council of Higher Educ. Loan Programs, Inc.; USA Education, Inc. & Student Loan Marketing Ass'n (collectively "Sallie Mae"); Texas Guaranteed Student Loan Corp. ("TGSL"); United Student Aid Funds, Inc. ("USA Funds").

¹¹ Forest Landreth ("Landreth"); Lou Larson ("Larson"); Sheila Musgrove ("Musgrove"); David Paas ("Paas"); Norman Post ("Post").

¹² Portogo, Inc. ("Portogo"); Tiger Testing; VeriSign, Inc. ("VeriSign").

¹³ Equifax, Inc. ("Equifax"); Experian Information Solutions, Inc. ("Experian").

¹⁴ Nat'l Ass'n of Consumer Agency Administrators ("NACAA").

¹⁵ See, e.g., Household at 1; Intuit at 2; ITAA at 1; NRF at 2; Sallie Mae at 2; SIIA at 3; TGSL at 1; Verisign at 2.

¹⁶ See, e.g., Visa at 1.

¹⁷ See, e.g., ICB at 2; Musgrove at 2; NADA at 2; NIADA at 9; Paas at 4–6.

¹⁸ Under section 313.3(k)(1) of the Privacy Rule, "financial institution" means: any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). An

respect the privacy of these customers and to protect the security and confidentiality of their nonpublic personal information. Covering recipients will ensure that all financial institutions over which the Commission has jurisdiction safeguard customer information and that such safeguards are not lost merely because information is shared with a third-party financial institution.²² The Commission also believes that the Rule's provisions for affiliates and service providers, discussed below, are not sufficient to address circumstances where information is transferred to another financial institution in the absence of a service or affiliate relationship, such as for use in debt collection or consumer reporting. Without imposing safeguards in such cases, customer information would be insufficiently protected and Congressional intent to safeguard such information would be undermined. Finally, the flexible requirements of the Rule—which allow the safeguards to vary according to the size and complexity of a financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue—permit entities to develop safeguards appropriate to their operations and should minimize any burdens on recipient entities.

Nevertheless, the Commission recognizes that financial institutions covered by its Rule also may simultaneously be subject to the Rule's requirements for service providers or affiliates.²³ For example, check printers, data processors, and real property appraisers that receive customer information as service providers for a financial institution will also be directly subject to the rule because they are themselves financial institutions.²⁴ However, the obligations the Rule creates for financial institutions are entirely consistent with the standard it

requires them to impose on their affiliate or service provider, so that each entity ultimately is required to maintain safeguards that are appropriate in light of the relevant circumstances. Thus, a financial institution that develops an information safeguards program according to the Rule will not be faced with additional or conflicting requirements merely because it also received customer information as an affiliate or service provider.

As under the proposal, the Safeguards Rule does not cover recipients of customer information that are not financial institutions, and are also neither affiliates nor service providers as defined by the Rule. However, the Commission encourages each financial institution to take reasonable steps to assure itself that any third party to which it discloses customer information has safeguards that are adequate to fulfill any representations made by the financial institution regarding the security of customer information or the manner in which it is handled by third parties.²⁵

In addition, as under the proposal, the Safeguards Rule only applies to information about a consumer who is a "customer" of a financial institution within the meaning of the Rule.²⁶ This approach is consistent with the Banking Agency Guidelines and the majority of comments that addressed this issue.²⁷ Although the Commission believes that limiting the Rule to information about customers is warranted by the plain language of section 501 of the Act, the Commission notes, as it did in the proposal, that protecting information about consumers may be a part of providing reasonable safeguards to "customer information" where the two types of information cannot be segregated reliably. Further, consistent with its mandate under section 5 of the FTC Act, the Commission expects that, as with customers, any information that a financial institution provides to a consumer will be accurate concerning the extent to which safeguards apply to them. Finally, the Commission expects that each financial institution will have in place at least the administrative or other safeguards necessary to honor any "opt-out" requests made by consumers under the Privacy Rule.

Other comments on the Rule's scope urged that compliance with various

alternative standards should constitute compliance with the Safeguards Rule. Several such commenters urged that the Rule permit compliance with another agency's safeguards standard in lieu of the FTC's. Specifically, commenters urged that: (1) Compliance with the SEC's rule constitute compliance with the FTC Rule, so that state investment advisors covered by the FTC Rule would be subject to the same standards as federal investment advisors, which are subject to the SEC's jurisdiction;²⁸ (2) non-federally-insured credit unions be permitted to comply with the NCUA's guidelines instead of the FTC's Rule, so that they would be subject to the same standards as federally-insured credit unions, which are under the NCUA's jurisdiction;²⁹ and (3) compliance with the Banking Agency Guidelines³⁰ be deemed compliance for service providers that may be engaged by banks as well as by entities under the FTC's jurisdiction. In addition, other commenters requested that compliance with other laws be deemed compliance with the Rule, such as the Fair Credit Reporting Act ("FCRA");³¹ the Health Insurance Portability and Accountability Act ("HIPAA");³² and the Fair Debt Collection Practices Act ("FDCPA").³³

As discussed above in connection with recipient financial institutions and others, the Commission does not intend to impose undue burdens on entities that already are subject to comparable safeguards requirements. In particular, the Commission envisions that any entity that can demonstrate compliance with the Banking Agency Guidelines (including the substantively identical NCUA Guidelines) will also satisfy the Rule. With respect to other rules and laws that may contain some safeguards, the Commission notes that the adoption of safeguards in furtherance of such rules or laws will be weighted heavily in assessing compliance with the Rule. However, because such other rules and laws do not necessarily provide comparable protections in terms of the safeguards mandated, data covered, and range of circumstances to which protections apply, compliance with such standards will not automatically ensure compliance with the Rule. For example, an entity's compliance with the FCRA, which limits the purposes for which certain financial information may be disclosed, will not guarantee that an

²² Under the Act, the Commission has jurisdiction over "any other financial institution or other person that is not subject to the jurisdiction of any agency or authority." 15 U.S.C. Section 6805(7). Thus, the Commission does not have jurisdiction over any financial institution that is subject to another Agency's authority by the Act, including national banks, bank holding companies and savings associations the deposits of which are insured by the FDIC. See *id.* at Section 6805(a)(1)–(6).

²³ As discussed below, the FTC Rule requires financial institutions to ensure the safeguards of their affiliates and take steps to oversee their service providers' safeguards. See sections 314.2(b) and 314.4(d), below. What safeguards would be appropriate for an affiliate or service provider depends on the facts and circumstances, just as it would for a financial institution that is directly covered by the Rule.

²⁴ It should be noted that this potential overlap exists for all financial institutions that are affiliates or service providers of other financial institutions, not just recipient entities.

²⁵ Misrepresentations regarding these issues could violate the Privacy Rule and Section 5 of the FTC Act.

²⁶ The Rule incorporates the definition of "customer" set forth in section 313(h) of the Privacy Rule. See section 314.2(a).

²⁷ See, e.g., ACA at 4; DBA at 1; Mastercard at 1–2; but see Intuit at 3–4; NACAA at 1.

²⁸ NASAA at 2.

²⁹ CUNA at 1; OCUL at 3.

³⁰ Indep. Ins. Agents at 2.

³¹ CDIA at 2–3; NIADA at 3.

³² NIADA at 3.

³³ ACA at 4–5.

entity has adopted a comprehensive information security plan as described in the Rule.

Section 314.2: Definitions

This section defines terms used in the Safeguards Rule. As under the proposal, paragraph (a) makes clear that, unless otherwise stated, terms used in the Safeguards Rule bear the same meaning as in the Commission's Privacy Rule. The remaining paragraphs (b)-(d) of this section define the terms "customer information," "information security program," and "service provider," respectively.

In addressing this section generally, several commenters expressed concern that the definitions would be confusing to the extent that they differ from those set forth in the Privacy Rule or the Banking Agency Guidelines.³⁴ In response, the Commission notes that, the terms used in the Rule are consistent with those used in the Privacy Rule, and differ from those used in the Guidelines only as needed to clarify the Rule's scope and make its terms more understandable and appropriate to the diverse range of non-bank financial institutions subject to the Commission's jurisdiction. Thus, as described below, the Rule defines "customer information" to include information handled by affiliates. Similarly, the Rule omits definitions found in the Guidelines, such as "Board of Directors" or "subsidiary," that are not universally applicable to entities that will be subject to the Rule.

Proposed paragraph (b) defined "customer information" as any record containing nonpublic personal information, as defined in paragraph 313.3(n) of the Privacy Rule, about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of a financial institution or its affiliates.³⁵ Thus, to the extent that a financial institution shares customer information with its affiliates, the proposal required it to ensure that the affiliates maintain appropriate safeguards for the customer information at issue.

Commenters expressed varying views on whether a financial institution should be responsible for its affiliates' safeguards. Some commenters agreed that customer information held by affiliates should be protected by the Rule.³⁵ However, some commenters requested that affiliates that are

financial institutions subject to the jurisdiction of another agency be permitted to comply with the safeguards standards of that agency in lieu of the Commission's Rule.³⁶ Finally, several commenters stated that the Rule should not cover affiliates at all because (1) the Act was not meant to cover any entity that is not a financial institution and some affiliates may not be financial institutions³⁷ or (2) the fact that the Act permits financial institutions to disclose nonpublic personal information to affiliates without providing any notice or opt out indicates that no affiliates were intended to be covered by the Act's safeguards provisions.³⁸

The Commission agrees that section 501 of the Act focuses on the obligations of financial institutions. It also notes, however, that the purpose of the Act is to protect customer information, and that such information easily may be shared with companies that are affiliated and under common control with such financial institutions. Therefore, the Rule imposes obligations only on financial institutions, but gives them duties with respect to customer information shared with their affiliates. The Commission does not believe that the unrestricted sharing that the Act permits among affiliates—including affiliates that are not financial institutions—shows an intent to exclude affiliates from safeguards obligations. To the contrary, the free sharing the Act permits among affiliates warrants a coordinated and consistent approach to security. The Commission notes, however, that the duty to ensure appropriate safeguards by affiliates arises only if a financial institution shares customer information with its affiliates; therefore this obligation can, and need only be, addressed as part of such sharing arrangements. In addition, the flexible standards of the Rule permit entities to develop safeguards appropriate to their operations and the sensitivity of the information at issue and should therefore minimize burdens on affiliates. Finally, as noted above, the Commission agrees that compliance with the Banking Agency Guidelines should satisfy the safeguards standards under the Commission's Rule. Therefore, any financial institution that can demonstrate its compliance with the Guidelines will not be subject to additional requirements merely because it is an affiliate of a financial institution that is covered by the Rule.

Proposed paragraph (c) defined "information security program" as "the administrative, technical, or physical safeguards" that a financial institution uses "to access, collect, process, store, use, transmit, dispose of, or otherwise handle customer information." This definition is virtually identical to the Banking Agency Guidelines' definition of "customer information systems." See Banking Agency Guidelines, section I.C.2.d. Few comments were received on this definition. In response to one commenter who urged that this term should better describe all of the ways that "customer information" can be provided to others, the Commission has added the words "distribute" and "protect" to this definition.³⁹ At the same time, the Commission notes that the words "otherwise handle" are intended to cover other ways that customer information is dealt with that are not specifically mentioned in the definition. Thus, the definition is adopted with only the minor changes noted above.

Proposed paragraph (d) defined the term "service provider" to mean "any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to the rule." This definition is virtually identical to the definition set forth in the Banking Agency Guidelines. See Banking Agency Guidelines, section I.C.2.e. Several commenters urged that this definition be amended to exclude particular entities from the definition of service providers, namely: (1) Accountants and auditors⁴⁰ (2) financial institutions that also provide services to banks, and are subject to examination under the Bank Service Company Act (BSCA);⁴¹ (3) any service provider that is also an affiliate of a financial institution;⁴² and (4) any service provider that receives information under the Privacy Rule's general exceptions in Sections 313.14 and 313.15, and is therefore permitted access to nonpublic personal information without need for a specific agreement concerning its reuse and redisclosure.⁴³

The Commission notes that the Banking Agency Guidelines do not contain exceptions to the definition of service provider. Thus, some of the recommended exceptions could result

³⁹ Equifax at 4.

⁴⁰ Ernst & Young at 1–2.

⁴¹ Visa at 4.

⁴² NIADA at 5.

⁴³ NIADA at 6 (but stating that the Rule's obligations for service providers are for the most part consistent with the Privacy Rule).

³⁴ See, e.g., Intuit at 4; NADA at 2; NIADA at 2, 4.

³⁵ Equifax at 2–4; Household at 1–2; NACAA at 1; NIADA at 4; SIIA at 2. See also NCHELP at 1.

³⁶ See, e.g., Household at 1–2; NCHELP at 2; OCUL at 2; USA Funds at 1. See also Equifax at 2.

³⁷ Mastercard at 4–5. See also NRF at 4.

³⁸ NAMI at 5–6.

in disparate treatment of entities performing services for a bank and entities performing services for a financial institution under the FTC's jurisdiction. In addition, no commenters demonstrated that the confidentiality requirements that apply to auditors and accountants (or other professionals) would address unauthorized access to information by third parties, fraud, or any other security issues contemplated by the Rule. Further, given the Rule's flexibility, the Commission is aware of no duplicative burdens that will result from application of the Rule to auditors, accountants, or other professionals, or to service providers to, or affiliates of, banks. Finally, the Commission has determined that the Rule should apply to all service providers, even those that the Privacy Rule does not require to enter into agreements concerning reuse and redisclosure of the relevant information. Although the Privacy Rule allows certain service providers to receive information without entering into confidentiality agreements, these confidentiality provisions do not address the range of security issues that are contemplated by the Safeguards Rule.

Other comments sought minor clarifications of the definition of service provider. Specifically, commenters asked (1) whether a student loan organization is covered where the tasks it performs—passing along updated contact information to schools, lenders, loan servicers, and others involved in the funding of student loans—could not be carried out by financial institutions directly;⁴⁴ and (2) whether subservicers, employees and independent contractors of service providers are required to maintain separate safeguards.⁴⁵ These concerns are addressed as follows: First, although outsourcing often involves functions that may be performed in-house, the Commission sees no reason to exclude from the Rule service providers that are specifically authorized to perform services that a financial institution cannot perform itself. Thus, such entities are covered to the extent that they meet the definition. Second, the focus of the Rule's service provider provisions is clearly on the original service provider—the entity that provides services “directly to a financial institution”—and not on subservicers or employees or independent contractors of these service providers. Although the original service provider should address the practices of these individuals and entities in its own security plan, the Rule does not

specifically require these individual entities to maintain their own safeguards.

For the reasons discussed, the definition of service provider is adopted as proposed.

Section 314.3: Standards for Safeguarding Customer Information

Proposed paragraph (a) of this section set forth the general standard that a financial institution must meet to comply with the Rule, namely to “develop, implement, and maintain a comprehensive written information security program that contains administrative, technical, and physical safeguards” that are appropriate to the size and complexity of the entity, the nature and scope of its activities, and the sensitivity of any customer information at issue. This standard is highly flexible, consistent with the comments, the Banking Agency Guidelines, and the Advisory Committee's Report, which concluded that a business should develop “a program that has a continuous life cycle designed to meet the needs of a particular organization or industry.”⁴⁶ See ACR at 18. Paragraph (a) also requires that each information security program include the basic elements set forth in proposed section 314.4 of the Rule, and be reasonably designed to meet the objectives set forth in section 314.3(b). For the reasons discussed below, this standard is adopted with only minor changes.

As noted above, commenters were generally supportive of the proposed standard, citing both its flexibility and its similarity to the Banking Agency Guidelines.⁴⁷ In addition, the numerous commenters who addressed whether the information security program should be in writing were supportive of this requirement,⁴⁸ stating that such a requirement is reasonable⁴⁹ and essential to the effective implementation and management of safeguards.⁵⁰ At the same time, two commenters suggested that the term “comprehensive” be deleted to avoid implying that the writing itself should be comprehensive.⁵¹ One commenter urged that the Final Rule explicitly state—as was stated in the section-by-section

analysis of the Proposed Rule⁵²—that the writing need not be contained in a single document. In response, the Commission has amended the standard slightly, so that each financial institution must “develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards” that are appropriate to the size and complexity of the entity, the nature and scope of its activities, and the sensitivity of any customer information at issue. See paragraph (a). The Commission believes that this standard will ensure a comprehensive, coordinated approach to security while emphasizing the flexibility of the writing requirement.

One commenter requested that the Rule specify that a financial institution need not disclose its information security plan to any third party other than law enforcers. In response, the Commission notes that the Rule itself creates no obligation for a financial institution to disclose its information security program. Moreover, the Privacy Rule requires a financial institution to disclose to consumers only the most general information about its safeguards. See 16 CFR 313.6(a)(8) and (c)(6). However, the Safeguards Rule leaves private parties free to negotiate disclosure of any safeguards information that may be relevant to the business at hand. Further, neither the G-L-B Act nor the Rule provides a shield to disclosure that is sought by law enforcement or pursuant to court order, subpoena or other legal process.

Section 314.4: Elements

This section sets forth the general elements that a financial institution must include in its information security program. The elements create a framework for developing, implementing, and maintaining the required safeguards, but leave each financial institution discretion to tailor its information security program to its own circumstances. Subject to the changes to paragraphs (d) and (e) that are set forth below, these elements are adopted as proposed.

1. Paragraph (a)

Paragraph (a) requires each financial institution to designate an employee or employees to coordinate its information security program in order to ensure accountability and achieve adequate safeguards. This requirement is similar to the Banking Agency Guidelines'

⁴⁶ The adaptability of the standard according to “the sensitivity of information” mirrors the Advisory Committee's finding that “different types of data warrant different levels of protection.” *Id.*

⁴⁷ See *supra* nn.15 and 16, and accompanying text.

⁴⁸ CDIA at 4; Equifax at 5; Intuit at 4; NFCU at 1; NFFG at 1; NCHLP at 3; NASAA at 2.

⁴⁹ See, e.g., NCHLP at 3.

⁵⁰ See, e.g., Intuit at 4.

⁵¹ CDIA at 4; Equifax at 5.

⁵² 66 FR at 41165.

⁴⁴ TGSL at 2.

⁴⁵ Equifax at 4.

requirement that each institution involve and report to its Board of Directors (*see* 66 FR 41166, *citing* Paragraphs III.A. and III.F., respectively), but allows designation of any employee or employees to better accommodate entities that are not controlled by Boards of Directors. Nearly all commenters on this paragraph expressed support, noting the importance of establishing a point of contact and citing the provision's flexibility.⁵³ However, some commenters requested minor changes, namely: (1) That the Rule state that a financial institution need not designate an employee for each of its subsidiaries; (2) that the words "as appropriate" be added to the requirement; and (3) that the Rule make clear that financial institutions may outsource safeguards procedures.⁵⁴ By contrast, one commenter opposed requiring financial institutions to designate any individual employee(s), based on a concern that customers might attempt to hold such designee(s) individually liable for any breach of security that occurs.⁵⁵

The Commission recognizes the importance of reserving to financial institutions the flexibility to select and designate the employee(s) that are needed to ensure accountability and achieve adequate safeguards. The Commission is particularly concerned that small institutions not be burdened disproportionately by this paragraph (or by other requirements) of the Rule. For these reasons, the paragraph allows each financial institution to determine which employee(s) to designate, including whether to designate additional employees to handle different subsidiaries. Further, there is nothing in the Rule to prevent a financial institution from outsourcing safeguards functions as appropriate, provided that at least one of its own employees is designated to see that such functions are properly carried out. At the same time, the Commission declines to add the words "as appropriate" to this paragraph because such language would only repeat the Rule's overarching requirement that each financial institution develop, implement and maintain "appropriate" safeguards. Lastly, the Commission notes that this Rule does not address or alter traditional principles of corporate liability and, therefore, should neither create nor limit individual liability for

a financial institution's designated employee(s). Thus, paragraph (a) is adopted as proposed.

2. Paragraph (b)

Proposed paragraph (b) required each financial institution to "identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks." The proposal further required each financial institution to consider risks in each area of its operations, including three areas that the Commission believes are particularly relevant to information security: (1) Employee training and management; (2) information systems, including information processing, storage, transmission and disposal; and (3) detecting, preventing and responding to attacks, intrusions, or other systems failures. This paragraph is similar to the Banking Agency Guidelines requirement to assess risks.⁵⁶

Commenters who addressed the issue generally supported including a risk assessment requirement within the Rule.⁵⁷ Some of these commenters supported the paragraph as proposed, stating that its benefits are appropriate relative to its burdens, and that it provides the proper level of guidance on how risk assessment should be carried out.⁵⁸ Commenters that supported the paragraph's general description of the types of risks to be considered—including the proposed areas of operation—emphasized that the threats to information security are ever changing, and therefore can only be described in general terms.⁵⁹ By contrast, other commenters urged that the paragraph be made more specific in a variety of ways, namely by: (1) Defining specific categories of threats and hazards, such as "risks to physical security;" (2) including more concrete and extensive guidance on how small businesses might perform the required assessment; or (3) including a procedure by which the FTC will conduct reviews or audits of the security practices of

financial institutions under its jurisdiction.⁶⁰

The Commission notes the importance of providing guidance to financial institutions, particularly small businesses, on how to comply with this and other aspects of the Rule. The Commission therefore intends to issue educational materials to help businesses identify risks and comply with the various other provisions of the Rule. Because of the ever-changing nature of the relevant risks, however, the Commission does not find it appropriate to delineate risks more specifically within the Rule. In addition, to retain appropriate flexibility, the Commission will rely on its discretion in enforcing the Rule, and not describe any particular schedule or methods for enforcement.⁶¹ At the same time, the Commission has amended slightly the areas of operation, in order to better describe the activities that financial institutions should consider in developing, implementing and maintaining their information security programs. Specifically, the Commission has added (1) the item "network and software design" to the examples of information systems a financial institution should examine; and (2) the term "detecting" to the requirement that each financial institution consider means of "preventing and responding" to attacks, intrusions and other systems failures. In all other respects, paragraph (b) is adopted as proposed.

3. Paragraph (c)

Proposed paragraph (c) required each financial institution to "design and implement information safeguards to control the risks [identified] through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures." The proposal further required each financial institution to consider its areas of operation in fulfilling this requirement. As with proposed paragraph (b), above, commenters generally supported this provision, citing its flexibility and the appropriateness of its benefits relative to its burdens.⁶² However, one commenter

⁶⁰ NACAA comment on the ANPR, at 2; Paas at 3; Musgrove at 2, respectively.

⁶¹ By contrast to the Banking Agencies, the Commission is not authorized to conduct regular audits and review of entities under its jurisdiction.

⁶² Intuit at 5; NCHELP at 4; SIIA at 2. In addition, as elsewhere, commenters urged that the paragraph include more guidance, so that businesses—particularly smaller entities, such as sole proprietorships—will better understand what safeguards are sufficient to comply with the Rule. *See* NIADA at 7–8; Paas at 4–5. As discussed above, the Commission agrees that educating businesses

⁵³ *See, e.g.*, Intuit at 4; Mastercard at 6–7; NACAA at 1–2; NCHELP at 3; Sallie Mae at 3; SIIA at 2; Visa at 2.

⁵⁴ Sallie Mae at 3; Equifax at 6; NRF at 5, respectively.

⁵⁵ NIADA at 6.

⁵⁶ *See* Banking Agency Guidelines, Paragraph III. B.

⁵⁷ *See, e.g.*, Equifax at 7; Intuit at 5; Mastercard at 7; NASAA at 2; NCHELP at 3; Portogo at 1; SIIA at 4; VeriSign at 1.

⁵⁸ *See, e.g.*, Intuit at 5; Mastercard at 7; SIIA at 2.

⁵⁹ Oracle at 2; Mastercard at 7.

asked that the provision be revised to require only such safeguards as are “commercially reasonable,”⁶³ while another urged that the paragraph require each financial institution to keep specific written records of its particular safeguards procedures, such as its employee training activities and records retention schedules, to demonstrate compliance with the Rule.⁶⁴

The Commission recognizes that each financial institution must focus its limited resources on addressing those risks that are most relevant to its operations. However, because the Rule already contains flexible standards that take a variety of factors into account, the Commission does not believe it is necessary or appropriate to revise the Rule to require only such safeguards as are “commercially reasonable.” At the same time, to preserve flexibility and minimize burdens, the Commission declines to revise this paragraph to require that financial institutions document specific aspects of their risk control activities. For these reasons, paragraph (c) is adopted as proposed.

4. Paragraph (d)

Proposed paragraph (d) required each financial institution to oversee its service providers by selecting and retaining service providers that are “capable of maintaining appropriate safeguards” for the customer information at issue (paragraph (d)(1)), and requiring its service providers by contract to “implement and maintain such safeguards” (paragraph (d)(2)). For the reasons discussed below, paragraph (d)(1) is revised slightly, while paragraph (d)(2) is adopted as proposed.

Commenters supported requiring oversight of service providers’ safeguards by financial institutions, particularly when, as one coalition of financial services organizations noted, the financial services industry increasingly relies on third parties to support core functions and online delivery.⁶⁵ However, in commenting on proposed paragraph (d)(1), some commenters expressed concern about the ability of businesses—particularly smaller entities—to evaluate a service provider’s capabilities.⁶⁶ At the same

time, other commenters supported adding to the Rule various standards for financial institutions to use in selecting service providers, specifically: (1) That financial institutions have “reason to believe” their service providers are capable of maintaining appropriate safeguards;⁶⁷ (2) that they use a “due diligence” review, as under the Banking Agency guidelines;⁶⁸ or (3) that they select service providers that are “capable of maintaining appropriate safeguards.”⁶⁹

The Commission agrees that businesses cannot be expected to perform unlimited evaluation of their service providers’ capabilities. Thus, the Commission has amended the provision to state that each financial institution must “take reasonable steps” to select and retain appropriate service providers. This added language more closely parallels the Banking Agency Guidelines, as well as the Rule’s requirement to assess risks that are “reasonably foreseeable.” The steps that are reasonable under the Rule will depend upon the circumstances and the relationship between the financial institution and the service provider in question. At a minimum, the Commission envisions that each financial institution will (1) take reasonable steps to assure itself that its current and potential service providers maintain sufficient procedures to detect and respond to security breaches, and (2) maintain reasonable procedures to discover and respond to widely-known security failures by its current and potential service providers.

Proposed paragraph (d)(2) required financial institutions to enter into contracts that require service providers to implement and maintain appropriate safeguards. Most comments that addressed this requirement supported it.⁷⁰ Nevertheless, as discussed above, some commenters urged that certain service providers be exempt from the Rule, or be permitted to comply with the safeguards standards of another agency, such as their own functional regulator in the case of financial institution service providers. These comments already have been addressed above. In addition, two commenters urged that the Rule give examples of appropriate language or specifically require the inclusion of certain clauses

in the contract,⁷¹ while other commenters stated that no such specifications are needed or desirable.⁷² The Commission believes that financial institutions are well positioned to develop and implement appropriate contracts with their service providers. Further, keeping the contract provision flexible should allow financial institutions and their service providers to develop arrangements that do not impose undue or conflicting burdens on service providers that may be subject to other standards and/or agreements concerning safeguards. Therefore, the Commission declines to include specific contract language within the Rule. However, the Commission intends to provide education for businesses on how to comply with the Rule, and will include general guidance concerning oversight of service providers as part of this effort. For these reasons, paragraph (d)(2) is adopted as proposed.

5. Paragraph (e)

Proposed paragraph (e) required each financial institution to “evaluate and adjust [its] information security program in light of any material changes to [its] business that may affect [its] safeguards.” The preamble to the proposed section offered examples of such material changes, namely changes in technology; changes to its operations or business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, or changes to the services provided; new or emerging internal or external threats to information security; or any other circumstances that give it reason to know that its information security program is vulnerable to attack or compromise. *See* 66 FR 41167. Several commenters supported this requirement as proposed.⁷³ However, a few commenters recommended certain revisions to the paragraph’s description of the types of changes that may warrant evaluation and adjustment of an entity’s safeguards. Specifically, one commenter urged that although changes in the sensitivity of customer information or the nature of any threats will warrant evaluation, changes to a business’s internal organization may be irrelevant to its safeguards, and therefore should not necessitate a review.⁷⁴ Similarly, another commenter urged that the paragraph be revised to require that a financial institution “take reasonable steps so that the information security

and others is critical to achieving the Rule’s objectives, and plans to issue educational materials in connection with the Rule.

⁶³ Equifax at 8.

⁶⁴ Musgrove at 2.

⁶⁵ BITS at 1. *See also* CDIA at 6; ITAA at 3; VeriSign at 2 (Rule appropriately places on financial institutions the burden to select appropriate service providers).

⁶⁶ Paas at 5. *See also* NRF at 5 (expressing concern that Rule could make financial institutions strictly liable for safeguards breaches by their service providers).

⁶⁷ NRF at 5; TGSL at 2.

⁶⁸ Household at 1; ICBA at 1; NIADA at 6.

⁶⁹ Mastercard at 7.

⁷⁰ Equifax at 8; Indep. Ins. Agents 3; Intuit at 5; Mastercard at 7; NACAA at 2; NCHLP at 4; Navy Federal Financial Group at 1–2; NIADA at 7; Sallie Mae at 3; SIIA at 2.

⁷¹ NADA at 3; Navy Federal Financial Group at 1–2.

⁷² Intuit at 5; Sallie Mae at 3.

⁷³ NACAA at 2; NCHLP at 5; SIIA at 2.

⁷⁴ Intuit at 6.

program continues to be appropriate” for the financial institution.⁷⁵

Consistent with the intent of the Proposed Rule, as well as the concerns reflected in these comments, the Commission believes that the bases for a financial institution to adjust its information security program will vary depending on the circumstances and may include a wide range of factors. Accordingly, paragraph (e) has been amended to more clearly reflect the fact-specific nature of the inquiry and to better encompass the broad range of factors that a financial institution should consider. Under the revised paragraph, each financial institution must evaluate and adjust its information security program “in light of the results of the testing and monitoring required by paragraph (c); any material changes to [its] operations or business arrangements; or any other circumstances that you know or have reason to know may have a material impact on [its] information security program.” The Commission believes that the Rule allows a financial institution sufficient flexibility as to how to adjust its safeguards, and therefore finds it unnecessary to limit the responsibility of financial institutions to taking “reasonable steps” to make any adjustments. Thus, paragraph (e) is adopted with the changes noted above.

Section 314.5: Effective Date

Proposed section 314.5 required each financial institution covered by the Rule to implement an information security program not later than one year from the date on which a Final Rule is issued. In addition, the proposal requested comment on whether the Rule should contain a transition period to allow the continuation of existing contracts with service providers, even if the contracts would not satisfy the Rule’s requirements.

Many commenters supported as adequate an effective date of one year from the date on which the Final Rule is issued.⁷⁶ A few commenters urged that a longer time be given, such as 18 months,⁷⁷ or that an additional year be allowed for businesses—particularly small entities—to comply.⁷⁸ In addition, all commenters who addressed the issue urged that the Rule allow a transition

period for service provider contracts.⁷⁹ Most of these commenters requested that financial institutions be given two years to make service provider contracts comply,⁸⁰ while a few commenters sought a slightly longer time.⁸¹

Consistent with the majority of comments, the Rule will take effect one year from the date on which the Final Rule is published in the **Federal Register**, except that there will be a transition rule for contracts between financial institutions and nonaffiliated third party service providers. Under the transition Rule, set forth in section 314.5(b) of the Rule, financial institutions will be given an additional year to bring these service provider contracts into compliance with the Rule, as long as the contract was in place 30 days after the date on which the Final Rule is published in the **Federal Register**. The transition rule parallels the two-year grandfathering of service contracts that was permitted under both the Privacy Rule and the Banking Agency Guidelines. The Commission believes that the effective date and transition rule will provide businesses appropriate flexibility in complying with the Rule.

Section D. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”), 44 U.S.C. Chapter 35, requires federal agencies to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons. 44 U.S.C. 3502(3)(a)(i). Under the PRA, a rule creates a “collection of information” where ten or more persons are asked to report, provide, disclose, or record information” in response to “identical questions.” See 44 U.S.C. 3502(3)(A). Applying these standards, the Rule does not constitute a “collection of information.” The Rule calls upon affected financial institutions to develop or strengthen their information security programs in order to provide reasonable safeguards. Under the Rule, each financial institution’s safeguards will vary according to its size and complexity, the nature and scope of its activities, and the sensitivity of the information involved. For example, a financial institution with numerous employees would develop and implement employee training and management procedures beyond those that would be appropriate or reasonable for a sole proprietorship, such as an individual tax preparer or mortgage

broker. Similarly, a financial institution that shares customer information with numerous affiliates would need to take steps to ensure that such information remains protected, while a financial institution with no affiliates would not need to address this issue. Thus, although each financial institution must summarize its compliance efforts in one or more written documents, the discretionary balancing of factors and circumstances that the Rule allows—including the myriad operational differences among businesses that it contemplated—does not require entities to answer “identical questions,” and therefore does not trigger the PRA’s requirements. See “The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection,” Office of Information and Regulatory Affairs, OMB (August 16, 1999), at 20–21.

Section E. Regulatory Flexibility Act

In its ANPR, the Commission stated its belief that, under the Regulatory Flexibility Act (“RFA”), 5 U.S.C. 604(a), it was not required to issue an Initial Regulatory Flexibility Analysis (“IRFA”) because the Commission did not expect that the Proposed Rule would have a significant economic impact on a substantial number of small entities within the meaning of the Act. See 66 FR at 41167. The Commission nonetheless issued an IRFA with the Proposed Rule in order to inquire into the possible impact of the Proposed Rule on small entities, and to provide information to small businesses, as well as other businesses, on how to implement the Rule. *Id.*

Although the Commission specifically sought comment on the costs to small entities of complying with the Rule, no commenters provided specific cost information. Some commenters generally praised the proposal’s flexibility⁸² or noted that given its flexible standards, it was appropriate for the Rule to apply equally to businesses of all sizes.⁸³ However, other commenters suggested that small entities may be disproportionately burdened by the Rule because they lack expertise (relative to larger entities) in developing, implementing and maintaining the required safeguards.⁸⁴ In light of these comments, the Commission has carefully considered whether to certify that the Rule will not have a significant impact on a

⁷⁵ Equifax at 9.

⁷⁶ See, e.g., Equifax at 10; Intuit at 6; Mastercard at 8; NIADA at 8; OCUL at 3; Sallie Mae at 3; SIIA at 2; USA Funds at 1–2.

⁷⁷ NADA at 2–3; NIADA at 8. See also NFFG at 2 (2 years).

⁷⁸ ACA at 6–7.

⁷⁹ See, e.g., CDIA at 5; NIADA at 8; OCUL at 3; SIIA at 2; TGSL at 2; Visa at 5.

⁸⁰ See, e.g., Equifax at 10; NRF at 5; NFFG at 2; OCUL at 3.

⁸¹ Sallie Mae at 3; Visa at 5.

⁸² See, e.g., Household at 1; SIIA at 1; TGSL at 1; VeriSign at 1.

⁸³ Intuit at 2; NASAA at 2.

⁸⁴ See, e.g., NADA at 2; NIADA at 9; Musgrove at 2 (stating that small financial institutions may need to hire outside consultants to comply with Rule).

substantial number of small entities. The Commission continues to believe that the Rule's impact will not be substantial in the case of most small entities. However, the Commission cannot quantify the impact the Rule will have on such entities. Therefore, in the interest of thoroughness, the Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") with this Final Rule. 5 U.S.C. 605.

1. Succinct Statement of the Need for, and Objectives of, the Rule

The Final Rule is necessary in order to implement section 501(b) of the G-L-B Act, which requires the FTC to establish standards for financial institutions subject to its jurisdiction relating to administrative, technical, and physical standards. According to section 501(b), these standards must: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. These objectives have been discussed above in the statement of basis and purpose for the Final Rule.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA; Summary of the Assessment of the Agency of Such Issues; and Statement of Any Changes Made in the Rule as a Result of Such Comments

As stated above, no comments were received concerning specific costs that will be imposed on small entities by the Rule. However, some commenters stated that the Rule and/or certain of its requirements would impose high costs on businesses, including small entities.⁸⁵ In addition, as stated, a few commenters suggested that small entities may be disproportionately burdened by the Rule because they lack expertise (relative to larger entities) in developing, implementing and maintaining the required safeguards.⁸⁶ Finally, as stated above, many commenters urged that the Commission provide guidance on how to comply with the Rule to assist entities—particularly smaller businesses—to comply without incurring undue

expense.⁸⁷ In addition, some commenters specifically requested guidance on how to assess risks as required by section 314.4(b);⁸⁸ develop, implement and maintain safeguards as required by section 314.4(c);⁸⁹ and oversee service providers as required by section 314.4(d).

The Commission took comments respecting the Rule's impact on small entities into account by designing flexible safeguards standards (section 313.3(a)). Similarly, the Commission took smaller entities into account in allowing each financial institution to decide for itself what employees to designate to handle safeguards (section 314.4(a)), in order to give businesses, particularly smaller entities, flexibility in complying with the Rule. Lastly, because some commenters expressed concern about the ability of businesses—particularly smaller entities—to evaluate a service provider's capabilities,⁹⁰ the Commission amended the relevant paragraph to state that each financial institution must "take reasonable steps" to select and retain appropriate service providers.

In addition to the above changes, the Commission has taken into account those comments that stated the importance of educating businesses and others on how to implement and maintain information safeguards. The Commission agrees that such education is critical to achieving the Rule's objectives and to minimizing burdens on businesses. Thus, as stated in the Rule's preamble, the Commission plans to provide educational materials on or near the date on which compliance is required. As part of this effort, the Commission intends to perform outreach to inform small entities, such as individual tax preparers or other sole proprietors, of the Rule and its requirements.

In addition to the forthcoming educational materials, the Commission has given guidance in the Rule and its Preamble that is intended to assist businesses, particularly small entities, to comply with the Rule. Specifically, as discussed above, the Commission has included within the Rule a brief description of those areas of a business' operations that the Commission believes are most relevant to information security: (1) Employee training and management; (2) information systems,

including network and software design, as well as information processing, storage, transmission and disposal; and (3) detecting, preventing and responding to attacks, intrusions, or other systems failures. See section 314.3(b).

3. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

As previously discussed in the IRFA accompanying the Proposed Rule, it is difficult to estimate accurately the number of small entities that are financial institutions subject to the Rule. The definition of "financial institution," as under the Privacy Rule, includes any institution the business of which is engaging in a financial activity, as described in section 4(k) of the Bank Holding Company Act, which incorporates by reference the activities listed in 12 CFR 225.28 and 12 CFR 211.5(d), consolidated in 12 CFR 225.86. See 65 FR 14433 (Mar. 17, 2000).

The G-L-B Act does not specify the categories of financial institutions subject to the Commission's jurisdiction; rather, section 505(a)(5) vests the Commission with enforcement authority with respect to "any other financial institution or other person that is not subject to the jurisdiction of any [other] agency or authority [charged with enforcing the statute]." Financial institutions covered by the Rule will include many of the same lenders, financial advisors, loan brokers and servicers, collection agencies, financial advisors, tax preparers, real estate settlement services, and others that are subject to the Privacy Rule. Many of these financial institutions will not be subject to the Safeguards Rule to the extent that they do not have any "customer information" within the meaning of the Safeguards Rule. The Commission did not receive comments that helped it to identify in any comprehensive manner the small entities that will be affected by the rule. However, one commenter, the National Association of Automobile Dealers Association ("NADA") submitted 1999 data showing that, at that time, 5,292 franchised new automobile dealers had 30 or fewer employees; 1,706 had 20 or fewer employees; and 575 had 10 or fewer employees.⁹¹ In addition, the Commission is aware that many small businesses, such as individual tax preparers or mortgage brokers, will be covered by the Rule.

⁸⁵ FPA at 3; Paas at 2; see also OCUL (stating that the NCUA's safeguards rule is very burdensome for credit unions); Post at 1 (stating that Privacy Rule is very burdensome).

⁸⁶ See *supra* n. 81.

⁸⁷ See, e.g., ICB at 2; Musgrove at 2; NADA at 2; NIADA at 9; Paas at 4–6.

⁸⁸ Paas at 3.

⁸⁹ See NIADA at 7; Paas at 4–5.

⁹⁰ Paas at 5; see also NRF at 5 (expressing concern that Rule could make financial institutions strictly liable for safeguards breaches by their service providers).

⁹¹ NADA at 1.

4. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

As explained in the Commission's IRFA and the Paperwork Reduction Act discussion that appears elsewhere in this document, the Safeguards Rule does not impose any specific reporting or recordkeeping requirements. Accordingly, compliance with the Rule does not entail expenditures for particular types of professional skills that might be needed for the preparation of such reports or records.

The Rule, however, requires each covered institution to develop a written information security program covering customer information that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. The institution must designate an employee or employees to coordinate its safeguards; identify reasonably foreseeable risks and assess the effectiveness of any existing safeguards for controlling these risks; design and implement a safeguards program and regularly monitor its effectiveness; require service providers (by contract) to implement appropriate safeguards for the customer information at issue; and evaluate and adjust its program to material changes that may affect its safeguards, such as new or emerging threats to information security. As discussed above, these requirements will apply to institutions of all sizes that are subject to the FTC's jurisdiction pursuant to the Rule, including small entities, although the Commission did not receive comments that would enable a reliable estimate of the number of such small entities.

In light of concerns that compliance with these requirements might require the use of professional consulting skills that could be costly, the Commission, as explained in its IRFA, fashioned the Rule's requirements to be as flexible as possible consistent with the purposes of the G-L-B Act, so that entities subject to the Rule, including small entities, could simplify their information security program to the same extent that their overall operations are simplified. Furthermore, the Commission invited comments on the costs of establishing and operating an information security program for such entities, particularly any costs stemming from the proposed requirements to: (1) Regularly test or otherwise monitor the effectiveness of

the safeguards' key controls, systems, and procedures, and (2) develop a comprehensive information security program in written form. In response to comments that raised concerns that many businesses would not possess the required resources or expertise to fulfill the Rule's requirements, the Commission notes that the Rule is not intended to require that entities hire outside experts or consultants in order to comply. Further, the Commission has noted that it intends to provide educational materials that will assist such entities in compliance. In addition, in response to concerns that the preparation of a written plan could be burdensome, the Commission amended this requirement slightly to emphasize the flexibility of the writing requirement and make clear that the writing need not be contained in a single document.

5. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities, Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency That Affect the Impact on Small Entities Was Rejected

The G-L-B Act requires the FTC to issue a rule that establishes standards for safeguarding customer information. The G-L-B Act requires that standards be developed for institutions of all sizes. Therefore, the Rule applies equally to entities with assets of \$100 million or less, and not just to larger entities.

As previously noted, the Commission does not believe the Safeguards Rule imposes a significant economic impact on a substantial number of small entities. Nonetheless, to the extent that small entities are subject to the Rule, it imposes flexible standards that allow each institution to develop an information security program that is appropriate to its size and the nature of its operations. In this way, the impact of the Rule on small entities and any other entities subject to the Rule is no greater than necessary to effectuate the purposes and objectives of the G-L-B Act, which requires that the Commission adopt a rule specifying procedures sufficient to safeguard the privacy of customer information protected under the Act. To the extent that commenters suggested alternative regulatory approaches—such as that compliance with alternative standards be deemed compliance with the Rule—that could affect the Rule's impact on small entities, those comments and the

Commission's responses are discussed above in the statement of basis and purpose for the Final Rule.

List of Subjects for 16 CFR Part 314

Consumer protection, Credit, Data protection, Privacy, Trade practices.

Final Rule

For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR chapter I, subchapter C, by adding a new part 314 to read as follows:

PART 314—STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

Sec.

314.1 Purpose and scope.

314.2 Definitions.

314.3 Standards for safeguarding customer information.

314.4 Elements.

314.5 Effective date.

Authority: 15 U.S.C. 6801(b), 6805(b)(2).

§ 314.1 Purpose and scope.

(a) *Purpose.* This part, which implements sections 501 and 505(b)(2) of the Gramm-Leach-Bliley Act, sets forth standards for developing, implementing, and maintaining reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.

(b) *Scope.* This part applies to the handling of customer information by all financial institutions over which the Federal Trade Commission ("FTC" or "Commission") has jurisdiction. This part refers to such entities as "you." This part applies to all customer information in your possession, regardless of whether such information pertains to individuals with whom you have a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

§ 314.2 Definitions.

(a) *In general.* Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Commission's rule governing the Privacy of Consumer Financial Information, 16 CFR part 313.

(b) *Customer information* means any record containing nonpublic personal information as defined in 16 CFR 313.3(n), about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

(c) *Information security program* means the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

(d) *Service provider* means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to this part.

§ 314.3 Standards for safeguarding customer information.

(a) *Information security program.* You shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue. Such safeguards shall include the elements set forth in § 314.4 and shall be reasonably designed to achieve the objectives of this part, as set forth in paragraph (b) of this section.

(b) *Objectives.* The objectives of section 501(b) of the Act, and of this part, are to:

- (1) Insure the security and confidentiality of customer information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of such information; and
- (3) Protect against unauthorized access to or use of such information that

could result in substantial harm or inconvenience to any customer.

§ 314.4 Elements.

In order to develop, implement, and maintain your information security program, you shall:

- (a) Designate an employee or employees to coordinate your information security program.
- (b) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of your operations, including:

- (1) Employee training and management;
 - (2) Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
 - (3) Detecting, preventing and responding to attacks, intrusions, or other systems failures.
- (c) Design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

- (d) Oversee service providers, by:
- (1) Taking reasonable steps to select and retain service providers that are

capable of maintaining appropriate safeguards for the customer information at issue; and

- (2) Requiring your service providers by contract to implement and maintain such safeguards.

(e) Evaluate and adjust your information security program in light of the results of the testing and monitoring required by paragraph (c) of this section; any material changes to your operations or business arrangements; or any other circumstances that you know or have reason to know may have a material impact on your information security program.

§ 314.5 Effective date.

(a) Each financial institution subject to the Commission's jurisdiction must implement an information security program pursuant to this part no later than May 23, 2003.

(b) Two-year grandfathering of service contracts. Until May 24, 2004, a contract you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 314.4(d), even if the contract does not include a requirement that the service provider maintain appropriate safeguards, as long as you entered into the contract not later than June 24, 2002.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 02-12952 Filed 5-22-02; 8:45 am]
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Hamilton Sundstrand Power Systems; comments due by 5-28-02; published 3-28-02 [FR 02-07416]

Univair Aircraft Corp.; comments due by 5-30-02; published 4-15-02 [FR 02-08989]

Airworthiness standards:

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Raytheon (Beechcraft) Models V35, V35A, S35, 35-C33A, E33A, E33C airplanes; comments due by 5-29-02; published 4-29-02 [FR 02-09942]

Class D airspace; comments due by 5-29-02; published 4-29-02 [FR 02-09851]

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Anti-money laundering programs for mutual funds; comments due by 5-29-02; published 4-29-02 [FR 02-10454]

USA PATRIOT Act; implementation—
Anti-money laundering programs for operators of a credit card system; comments due by 5-29-02; published 4-29-02 [FR 02-10455]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

S. 378/P.L. 107-182

To redesignate the Federal building located at 3348 South Kedzie Avenue, in Chicago,

Illinois, as the "Paul Simon
Chicago Job Corps Center".
(May 21, 2002; 116 Stat. 584)

Last List May 22, 2002

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