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WHEN: Tuesday, December 6, 2005
9:00 a.m.–Noon

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Friday, December 2, 2005

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV05–984–1 FIR]

Walnuts Grown in California; Suspension of Provision Regarding Eligibility of Walnut Marketing Board Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the provision of the walnut marketing order (order) pertaining to eligibility of members to serve on the Walnut Marketing Board (Board). The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. This action is an interim measure that addresses a change in industry structure affecting cooperative marketing association related positions. This allows the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July 2005.

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487–5901, Fax: (559) 487–5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), hereinafter referred to as the ''order'', regulating the handling of walnuts grown in the State of California. The marketing agreement and order are effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an action that suspended a provision of the order pertaining to the eligibility of members to serve on the Board. The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. This action is an interim measure that addresses a change in the industry structure affecting cooperative marketing association related positions. This allows the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July 2005.

Section 984.35 of the order establishes the Board as the administrative body appointed by USDA to administer the order. That section also specifies composition of the Board, and allocates seats to cooperative and independent growers and handlers. The Board is comprised of ten members and ten alternate members. Two members represent handlers that are cooperative marketing associations of growers (cooperative handlers), and two members represent growers who market their walnuts through cooperative handlers. Two members represent handlers that are not cooperative marketing associations of growers (independent handlers), and two members represent growers that market their walnuts through independent handlers. One member represents growers that market their walnuts through either cooperative or independent handlers, whichever category handled over fifty percent of the walnuts handled by all handlers in the industry in the immediately preceding two marketing years. In recent years, this Board position has been allocated to the independent category. One member represents neither growers nor handlers (public member).

Prior to implementation of the interim final rule, § 984.38 of the order provided, in part, that no person shall be selected or continue to serve as a member or alternate member of the Board unless that person is engaged in the business of the group he or she was nominated to represent.

A change recently occurred in the walnut industry that impacts composition of the Board. A large cooperative marketing association recently converted to a publicly held corporation. The former cooperative association held two grower and two handler positions on the Board.

In order to address this change, § 984.38 of the order needed to be suspended to allow a representative Board to continue in place while the order is amended to reflect the new industry structure. Therefore, the Board recommended through a mail ballot vote in early July 2005, to suspend the order provision. USDA reviewed the recommendation and determined that suspending § 984.38 of the order regarding eligibility requirements of Board members would accomplish that objective. As previously discussed, § 984.38 provided that no person shall be selected or continue to serve as a member or alternate member of the Board unless that person is engaged in the business of the group he or she was nominated to represent.

If the eligibility requirements were not suspended, four of the Board members that represented the cooperative would be ineligible to serve on the Board. However, these members continue to represent a significant portion of the industry. Suspending the order provision regarding eligibility of Board members allows a complete Board to remain in place. This action enables a Board that is representative of the walnut industry to continue to administer the order without disruption while the order is being amended to reflect changes in the industry structure.

This action continues to suspend § 984.38 of the order entitled ''Eligibility.'' This action is in the best interest of handlers and growers in the California walnut industry as the industry transitions through a structural change.

Final Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and 50 walnut handlers subject to regulation under the marketing order. Small agricultural service firms are defined as those whose annual receipts are less than $6,000,000 and small agricultural producers have been defined by the Small Business Administration as those having annual receipts less than $750,000 (13 CFR 121.201).

Current industry information from the Board indicates that 35 of the 50 walnut handlers, or 70 percent, shipped less than $6,000,000 worth of walnuts and could be considered small businesses by the Small Business Administration. In addition, is it estimated that less than 1 percent of walnut producers have annual receipts in excess of $750,000. Based on the foregoing, the majority of walnut producers and handlers regulated under the marketing order may be classified as small entities.

This rule continues in effect an action that suspended provisions of the order pertaining to eligibility of members to serve on the Board. The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. Specifically, this action suspends § 984.38 of the order entitled ''Eligibility.''

Due to structural changes in the industry, the order provisions regarding Board composition no longer accurately reflect the industry composition. If the eligibility requirements were not suspended, four of the Board members that represented the cooperative become ineligible to serve on the Board. However, these members continue to represent a significant portion of the industry. Suspending the order provision regarding eligibility of Board members allows a complete Board to remain in place. This action enables a Board that still represents the walnut industry to continue to administer the order without disruption while the order is being amended to reflect changes in the industry structure. The Board unanimously recommended suspending order language by mail balloting in early July 2005.

Alternatives to this action were considered. One alternative was to remove the former cooperative members from the Board, which would result in a 6-member Board. This was not considered a preferred option because it would limit the size of the Board.

This rule continues to suspend order language pertaining to membership eligibility on the Board. Accordingly, this action does not impose any additional reporting or recordkeeping requirements, or any other costs, on either small or large walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 2005 (70 FR 50151). Copies of the rule were also mailed or sent via facsimile to all Walnut handlers. In addition, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended October 25, 2005. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that the order language being suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984 which was published at 70 FR 50151 on August 26, 2005, is adopted as a final rule without change.

Dated: November 22, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23552 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 2005N–0355]

RIN 0910–AF20

Revocation of Status of Specific Products; Group A Streptococcus

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the regulation applicable to the status of specific products; Group A streptococcus. FDA is removing the regulation because the existing requirement for Group A streptococcus organisms and derivatives is both obsolete and a perceived impediment to the development of Group A streptococcus vaccines. The regulation was written to apply to a group of products that are no longer on the market. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. We are issuing the removal directly as a final rule because it is noncontroversial, and there is little likelihood that we will receive any significant adverse comments. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under our usual procedures for notice and comment in the event that we receive any significant adverse comments on the direct final rule. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: This direct final rule is effective June 2, 2006. Submit written or electronic comments on or before February 15, 2006. If we receive no significant adverse comments during the specified comment period, we intend to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on June 2, 2006. If we receive any significant adverse comments during the comment period, we intend to withdraw this direct final rule before its effective date by publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0355 and/or RIN number 0910–AF20, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number or regulatory information number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 610.19 *Status of specific products; Group A streptococcus* (21 CFR 610.19), was published in the **Federal Register** of January 5, 1979 (44 FR 1544). FDA issued that regulation after reviewing and considering the findings of the independent advisory Panel on Review of Bacterial Vaccines and Bacterial Antigens with ''No U.S. Standard of Potency'' (the Panel). The preamble to the proposed rule for § 610.19, which was published in the **Federal Register** of November 8, 1977 (42 FR 58266), contained the findings of the Panel, including the Panel's specific findings about then-licensed products that contained Group A streptococcus (42 FR 58266 at 58277 through 58278). The regulation was a part of the Panel's review of the safety, effectiveness, and labeling of biological products licensed before July 1, 1972. In 1972, the regulatory authority of these biological products was transferred from the National Institutes of Health (NIH) to FDA. The Panel reviewed those licensed biological bacterial products that were labeled, ''No U.S. Standard of Potency.'' (There was a separate review for the ''Bacterial Vaccines and Toxoids with Standards of Potency.'') Products considered by the Panel included primarily mixtures of bacterial preparations, e.g., Mixed Vaccine Respiratory, which was described as containing chemically killed organisms consisting of *Streptococcus* (*pyrogenes*, *viridans*, and *nonhemolytic*), *Staphylococcus* (*aureus* and *albus*), *Diplococcus pneumoniae*, *Neiserria catarrhalis*, *Klebsiella pneumoniae*, and *Haemophilus influenzae* manufactured by Hollister-Stier, Division of Cutter Laboratories (42 FR 58266 at 58268). Many of the products considered by the Panel were indicated as treatments for diverse ailments such as colds, asthma, arthritis, and uveitis (42 FR 58266 at 58270).

The Panel report listed a number of major concerns with this group of products (''No U.S. Standard of Potency'') (42 FR 58266 at 58269). One of the major concerns was that no defined standards of potency existed for any of the products, so it was not possible to establish that the microbial factors manufacturers claimed to be present in the products were indeed there or in what concentration (42 FR 58266 at 58270). Many of these products were developed years before specific etiologic agents were associated with the cause of specific diseases. Moreover, the labeled indications for these products were for diseases of obscure etiology (Id.). Manufacturers could provide to the Panel neither clinical data to support the safety or efficacy of the products, nor any justification for

using the products as described other than uncontrolled and unconfirmed clinical impressions (Id.). Additional safety questions arose from the fact that the products were administered repeatedly over extended periods of time with no evidence of systematic followup for the types of adverse effects that might be associated with repeated inoculations (Id.). The Panel stated in their report, that in view of what was known from laboratory studies about potential risks associated with repeated inoculations of foreign substances, they had reservations about the long-term safety of this group of products (42 FR 58266 at 58270 through 58271). In fact, the Panel did not classify any of these products into category I (those biological products determined to be safe, effective, and not misbranded) (42 FR 58266 at 58315).

In the Panel report, the section specifically concerning Group A streptococcal vaccines describes the history, dating back to the 1930s, of major attempts to immunize humans with hemolytic streptococci (42 FR 58266 at 58277). These early studies demonstrated severe systemic toxicities (Id.). One study (Ref. 1) described the occurrence of acute rheumatic fever in siblings of rheumatic fever patients following vaccination with a partially purified preparation (Id.). In addition, immunological cross-reactivity between streptococcal cell wall protein and mammalian myocardium was demonstrated in vitro (Id.) (Ref. 2). However, the Panel report differentiated between the licensed products under review and highly purified preparations, which were at the research stage. The Panel report stated that the safety profile for a highly purified preparation was quite different, noting that no anti-heart reactive antibody has been observed in the post immunization sera of infants or adults receiving the purified preparation (Id.) (Ref. 3). The Panel concluded, based on demonstrated safety concerns, that the uncontrolled use of the Group A streptococcal antigens in bacterial vaccines with ''No U.S. Standard of Potency'' represented unacceptable risks (42 FR 58266 at 58278). In fact, the Panel stated:

> In view of the carefully conducted controlled studies currently under way with purified chemically defined antigenic preparations, one finds it difficult to justify the use of uncontrolled, poorly defined preparations presumed to contain antigens that have been demonstrated in earlier studies to produce local and systemic reactions. The hypothetical and theoretical objections stemming from laboratory studies linking mammalian and streptococcal antigens have been given serious consideration in the design and conduct of present studies treating humans with the newer purified streptococcal antigens. (42 FR 58266 at 58277). In contrast to the uncontrolled, poorly defined preparations, the Panel made clear at the time that they were not condemning the use of purified or characterized streptococcal antigens (Id.). Further, FDA reviews each biological product and determines whether the risk-benefit relationship is acceptable for the stage of investigation and for licensure (see 21 CFR parts 312 and 601). This review is performed under the authority of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act (see 21 U.S.C. 355(i); 42 U.S.C. 262(a)(3) and (a)(2)(A)). FDA's review is adequate to assess the safety, purity, and potency of products that companies seek to license, and to ensure that human subjects in clinical trials of investigational products are not exposed to unreasonable and significant risk of illness or injury.

Therefore, FDA concludes that § 610.19, which was codified following the Panel report, was meant to apply only to those bacterial vaccines which the Panel had under their review—licensed but poorly characterized products labeled ''No U.S. Standard of Potency''—and not to more characterized preparations under investigation then or now. Because there are no bacterial mixtures with ''No U.S. Standard of Potency'' containing Group A streptococcal antigens licensed at this time, and current manufacturing technology allows for characterization and purification of Group A streptococcal products, this regulation is obsolete. Although it was never intended to apply to the development of Group A streptococcal vaccines that had adequate testing, FDA has determined that it has been perceived to cover these products as well, and therefore should be removed in a direct final rule.

II. Highlights of the Direct Final Rule

We are removing § 610.19 because the existing requirement is obsolete and perceived to be impeding the development of Group A streptococcal vaccines using purified or characterized streptococcal antigens. The regulation is obsolete because it was written to apply to a group of products that are no longer on the market. Certain parties interested in developing new Group A streptococcal vaccines perceive the regulation as an impediment, voiced during public meetings and workshops, e.g., the Group A streptococcus workshop sponsored by the National Institute of Allergy and Infectious Diseases, NIH, held in Bethesda, MD on March 29 and 30, 2004. Group A streptococci are responsible for significant morbidity and mortality worldwide, including rheumatic fever and glomerulonephritis, as well as pharyngitis, impetigo, and other clinical manifestations. Therefore, a vaccine to prevent diseases caused by this organism would have a public health benefit. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how the agency will employ direct final rulemaking. We have determined that this rule is appropriate for direct final rulemaking because we believe that it is noncontroversial and we anticipate no significant adverse comments. Consistent with our procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to remove § 610.19. FDA is removing the regulation because it is both obsolete and a perceived impediment to the development of Group A streptococcus vaccines. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event that the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received in response to the companion proposed rule will be considered as comments regarding the direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comments, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register**. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are

frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subjects of a significant adverse comment.

If any significant adverse comments are received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a document, before the effective date of the direct final rule, confirming the effective date.

IV. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act of 1995

FDA has examined the impacts of the direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the direct final rule is removing a regulation, it would not result in any increased burden or costs on small entities. Therefore, the agency certifies that the direct final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this direct final rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Environmental Impact

The agency has determined, under 21 CFR 25.31(h), 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.

C. Federalism

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the direct final rule does not contain policies 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. Accordingly, the agency has concluded that the direct final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Massell, B.F., L.H. Honikman, and J. Amezcua, ''Rheumatic Fever Following Streptococcal Vaccination. Report of Three Cases,'' *Journal of the American Medical Association*, 207(6): 1115–1119, 1969.

2. Kaplan, M.H. and M. Meyeserian, ''An Immunological Cross-Reaction Between Group A Streptococcal Cells and Human Heart Tissue,'' *Lancet*, 1:706–710, 1962.

3. Fox, E.N., L.M. Pachman, M.K. Wittner, and A. Dorfman, ''Primary Immunization of Infants and Children with Group A Streptococcal M Protein,'' *Journal of Infectious Diseases*, 120:598–604, 1969.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated by the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.19 [Removed]

■ 2. Remove § 610.19.

Dated: November 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23546 Filed 12–1–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 16

[AAG/A Order No. 010–2005]

Privacy Act of 1974; Implementation

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), is issuing a final rule exempting a new system of records entitled the Terrorist Screening Records System (TSRS) (JUSTICE/FBI–019) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j) and (k). The FBI published a system of records notice for JUSTICE/FBI–019 and a proposed rule implementing these exemptions on July 28, 2005, at 70 FR 43661 and 43715. The listed exemptions are necessary to avoid interference with the law enforcement, intelligence, and counterterrorism functions and responsibilities of the FBI and the Terrorist Screening Center (TSC). This document addresses public comments on both the proposed rule and the system of records notice.

DATES: This final rule is effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2005, the FBI published notice of a new Privacy Act system of records entitled ''Terrorist Screening Records System, JUSTICE/FBI–019,'' which became effective on September 6, 2005.[1] The Terrorist Screening Records System (TSRS) supports the mission of the FBI-administered Terrorist Screening Center (TSC) to consolidate the Government's approach to terrorism screening. Under Homeland Security Presidential Directive/HSPD–6, the TSC maintains the Government's consolidated watch list of known and suspected terrorists in the Terrorist Screening Database (TSDB). As required by HSPD–6, the TSDB contains ''information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.'' [2] The TSDB is a sensitive-but-unclassified database containing only identifying information about known or suspected terrorists. Information from the TSDB is used to screen for terrorists in a variety of contexts, including during law enforcement encounters, the adjudication of applications for U.S. visas or other immigration and citizenship programs, at U.S. land borders and ports of entry, and for civil aviation security purposes. The TSDB is included in the new TSRS.

In conjunction with publication of the TSRS system of records notice, the FBI initiated a rulemaking to exempt the TSRS from a number of provisions of the Privacy Act, pursuant to its authority in Privacy Act subsections 552a(j) and (k).[3] On July 28, 2005, the FBI published at 70 FR 43661 a proposed rule exempting records in the TSRS from Privacy Act subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g).[4]

Public Comments

The FBI received comments on the proposed rule and the TSRS system of records notice from the Electronic Privacy Information Center (EPIC) and joint comments from the Electronic Frontier Foundation and Privacy Activism (EFF/PA). A discussion of these comments and the FBI's responses are set forth below. With respect to the public comments on the routine uses for the TSRS that were published in the July 28, 2005, notice, the FBI has determined that none of the comments merited changes to routine uses prior to their implementation.

A. Exemption From Subsections (c) and (d) (Accounting, Access, and Amendment)

EPIC objected to the FBI's proposal to exempt the TSRS from subsection (d) of the Privacy Act, which generally requires an agency to permit individuals access to records pertaining to them and the ability to request correction of any portion they believe is not accurate, relevant, timely, or complete.[5] EPIC stated that exemption of the TSRS from subsection (d) is in conflict with the purposes of the Privacy Act. EPIC stated that the FBI's notice of proposed rulemaking does not explain how the application of standard Privacy Act procedures permitting access to records would seriously damage the purpose of the TSRS.

EFF/PA objected to the FBI's application of any of the exemptions to information about individuals who have been misidentified as known or suspected terrorists. EFF/PA stated that, for instance, there is no basis to exempt information about misidentified persons from subsection (c)(3) of the Privacy Act, which permits individuals to obtain an accounting of any disclosures of records containing information about them.[6]

The exemption of the TSRS from the access provisions of subsection (d) is fully consistent with the language and intent of the Privacy Act. Allowing the subject of a TSRS record to obtain access to the record could, among other things, reveal the Government's investigative interest in a known or suspected terrorist, leading to the destruction of evidence, improper influencing of witnesses, or flight of the subject. Public release of information in the TSRS also could endanger the safety of confidential sources and law enforcement personnel. Congress anticipated these types of potentially damaging consequences of allowing access to some categories of Government records and included the exemption provisions in the Privacy Act to address them. According to the Office of Management and Budget's Guidelines for Privacy Act Implementation (OMB Guidelines), ''[t]he drafters of the Act recognized that the application of all the requirements of the Act to certain categories of records would have had undesirable and often unacceptable effects upon agencies in the conduct of necessary public business.'' [7] Frustrating the detection and prevention of terrorist activities and endangering the lives of law enforcement personnel are the type of ''undesirable'' and ''unacceptable'' effects on the Government's operation that the drafters of the Privacy Act sought to avoid through the allowance of exemptions. Thus, the FBI's claim of exemption from the access provisions of the Privacy Act for the TSRS is consistent with the principles of public policy reflected in the Act.

Although the FBI has claimed exemption from the access and amendment requirements of subsection (d), this exemption applies only to those records or portions of records contained in the TSRS that meet the requirements for exemption. While the FBI anticipates that all the records in the TSRS meet such requirements, individuals may submit requests for access to any non-exempt records pertaining to them. In addition, the FBI may allow individuals access to exempt records on a discretionary basis under proposed 28 CFR 16.96(r)(2). The FBI also will consider requests for amendment of records under this discretionary procedure. In addition, the TSC will work with the agencies that use data from the TSDB in their screening operations to assist those agencies in helping individuals who may be misidentified during the screening process.

EPIC stated that the FBI's discretionary procedures for access and amendment and its assistance to

[1] 70 FR 43715 (July 28, 2005).

[2] Homeland Security Presidential Directive/HSPD–6 (Sept. 16, 2003).

[3] 5 U.S.C. 552a(j), (k).

[4] 5 U.S.C. 552a(c)(3)–(4); (d)(1)–(4); (e)(1)–(3), (5), (8); (g).

[5] 5 U.S.C. 552a(d).

[6] 5 U.S.C. 552a(c)(3).

[7] 40 FR 28971 (July 9, 1975).

screening agencies in resolving complaints provide inadequate recourse for individuals misidentified as watch list matches. This is in part, according to EPIC, because the screening agencies do not have effective redress processes in place for those adversely affected by watch list screening procedures. The FBI believes that its procedures strike the appropriate balance between the interest in public safety and the needs of those individuals who experience repeated difficulties related to terrorist watch list information. The FBI and its partner agencies in the TSC continue to work to improve redress processes related to terrorist screening.

EPIC also stated that the application of the claimed exemptions to the entire TSRS is inappropriate, because the system will contain information that should be subject to access. EFF/PA objected to applying any exemptions to information about misidentified persons. They argued that because misidentified persons are not actually subjects of an investigation, the release of information about them would not reveal the Government's interest in investigating terrorists. Therefore, they argued, exemption from provisions such as subsection (c)(3) regarding accounting of record disclosures, is unwarranted.

As stated in subsection proposed 28 CFR 16.96(r)(2), the exemptions claimed by the FBI for the TSRS apply only to the extent that information in the system is subject to one of those exemptions. If any record or portion of a record in the TSRS is not subject to the claimed exemptions, the FBI will release that information, as appropriate, in response to a proper Privacy Act request. The FBI is claiming exemptions for the entire TSRS, however, in accordance with the language of 5 U.S.C. 552a(j) and (k), which permits the head of an agency ''to exempt any system of records'' from the access requirements of the Privacy Act. Furthermore, as stated in the proposed rule, the FBI may waive an applicable exemption where compliance with access procedures would not appear to interfere with or adversely affect the counterterrorism processes of the TSRS and the overall law enforcement process.

With respect to the comments of EFF/PA on misidentified persons, individuals are misidentified as known or suspected terrorists during the screening process when their names and other identifying information are the same as, or very similar to, that of a known or suspected terrorist. Disclosing information about misidentified persons, therefore, could reveal the Government's investigative interest in a terrorist suspect, because it could make known the name of the individual who actually is the subject of the Government's interest. Consequently, the Government has as great an interest in protecting the confidentiality of identifying information of misidentified persons as it does in protecting the confidentiality of the identities of the actual persons of interest. The FBI has added a discussion of this justification in sections 16.96(s)(1) and (3) of the final rule.

EPIC raised a question about the FBI's ability to use 5 U.S.C. 552a(k)(2) as the basis for exempting the TSRS from the access provisions in subsection (d). EPIC stated that exemption (k)(2) is applicable only where the system of records consists of investigatory material compiled for law enforcement purposes. EPIC further stated that exemption (k)(2) generally does not permit an agency to deny an individual access to a record where the agency's maintenance of the record resulted in the individual being denied a right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible.[8] EPIC requested further explanation of the FBI's authority to exempt the TSRS from the Privacy Act's access provisions, in light of the limitations on the applicability of the (k)(2) exemption.

Under the Privacy Act, an agency may exempt a system of records from the access provisions of subsections (c) and (d) if the system of records meets certain criteria under 5 U.S.C. 552a(j) or (k). The FBI is exempting the TSRS from the access provisions under the authority of 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

Exemption (j)(2) applies where a system of records consists of information compiled for purposes of a criminal investigation and the system is maintained by an agency or component of the agency that performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals.[9] The records in the TSRS come within the scope of the (j)(2) exemption because they are maintained by the FBI for the purpose of identifying individuals who pose potential terrorist threats and enforcing the criminal laws with respect to those individuals.[10]

Exemption (k)(1) applies to a system of records that contains information classified in the interest of national security.[11] Some records in the TSRS are subject to exemption (k)(1) because they contain such classified information.

Exemption (k)(2) applies to investigatory material compiled for law enforcement purposes that is not otherwise covered by exemption (j)(2). The FBI believes most, if not all, records in the TSRS fall within the scope of exemptions (j)(2) and (k)(1). The FBI is invoking exemption (k)(2) as a precautionary measure to protect investigatory information that may not be covered by exemption (j)(2) or (k)(1). If an instance arises where a record is not covered by exemptions (j)(2) or (k)(1), and the exception to exemption (k)(2) applies regarding denial of an individual's right, privilege, or benefit due to maintenance of the record at issue, the FBI will provide the individual access to that record to the extent that the law requires.

B. Exemption From Subsection (e)(1) (Relevant and Necessary)

EPIC objected to the FBI's proposal to exempt the TSRS from subsection (e)(1) of the Privacy Act, which requires an agency to ''maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President.'' [12] EPIC stated that exemption of the TSRS from subsection (e)(1) will increase the likelihood that the system will contain erroneous and invasive information unrelated to terrorist screening.

As discussed in the notice of proposed rulemaking, the FBI is exempting the TSRS from subsection (e)(1) in furtherance of the screening and law enforcement purposes of the system. The collection of information during the screening process and the facilitation of an appropriate law enforcement response may involve the collection of identifying information that, following completion of the screening or response, turns out to have been unnecessary. It is not always possible to know in advance what information will be relevant or necessary, such that the TSC and the FBI can tailor their information collection in all cases to meet the requirements of subsection (e)(1). This is not, however, inconsistent with the principles of the Privacy Act. As discussed above, the drafters of the Privacy Act established exemptions from provisions such as subsection

[8] 5 U.S.C. 552a(k)(2).

[9] 5 U.S.C. 552a(j)(2).

[10] 70 FR 43716 (July 28, 2005).

[11] 5 U.S.C. 552a(k)(1).

[12] 5 U.S.C. 552a(e)(1).

(e)(1) to avoid inappropriately limiting the ability of the Government to carry out certain functions, such as law enforcement.[13] Constraining the collection of information included in the TSRS in accordance with the ''relevant and necessary'' requirement of subsection (e)(1) could discourage the appropriate collection of information, and thereby impede the Government's efforts to detect and apprehend terrorists. It is, therefore, appropriate to exempt the TSRS from subsection (e)(1).

C. Exemption From Subsection (e)(5) (Accuracy, Relevance, Timeliness and Completeness)

EPIC and EFF/PA objected to the FBI's proposal to exempt the TSRS from subsection (e)(5) of the Privacy Act, which requires agencies to ''maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.'' [14] EPIC and EFF/PA stated that exemption of the TSRS from subsection (e)(5) is inconsistent with the TSC's obligation under its governing organizational document to develop and maintain ''the most thorough, accurate, and current information possible'' about known or appropriately suspected terrorists.[15]

As discussed in the notice of proposed rulemaking, the TSC supports agencies that conduct terrorism investigations by collecting information from encounters with known or suspected terrorists. It is not always possible to determine, when collecting information during an encounter with a terrorist suspect, whether the information is accurate, relevant, timely, and complete. It is the nature of the investigative process to obtain information of uncertain accuracy and completeness with the goal of achieving accuracy and completeness. Moreover, with the passage of time, seemingly irrelevant or untimely information collected during an encounter with a terrorist suspect may acquire new significance as further investigation brings new details to light.

The TSC's obligation to develop and maintain the most thorough, accurate, and current information possible about individuals known or suspected to be terrorists must be read in the context of the investigative process. The FBI completely agrees with EPIC's view that ''[m]aintaining the most accurate possible data is unquestionably a critical goal of the TSRS * * *'' To meet this goal, TSC has implemented internal quality assurance procedures. Applying the requirements of subsection (e)(5), however, to the TSRS would hinder the ability of the law enforcement and intelligence agencies supported by TSC to conduct investigations and develop intelligence necessary for effective law enforcement and counterterrorism efforts.

The FBI also is exempting the TSRS from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the TSRS. As discussed above, the FBI has exempted TSRS records from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of counterterrorism investigations. In the past, where agencies have exempted records from access under subsection (d), individuals have asserted challenges to a record's accuracy, timeliness, completeness, and/or relevance under subsection (e)(5) as an alternative means to get access to the records. Exempting the TSRS from subsection (e)(5) serves to prevent the use of that subsection to circumvent the exemption claimed from subsection (d). The FBI has added a discussion of this justification in section 16.96(s)(7) of the final rule.

D. Exemption From Subsection (g) (Civil Remedies)

EPIC objected to the FBI's proposal to exempt the TSRS from subsection (g) of the Privacy Act, which establishes civil remedies for violations of certain of the Act's provisions.[16] Specifically, EPIC stated that the FBI failed to explain why it is exempting the TSRS from the civil remedies provisions in subsection (g) as they relate to the right to enforce the amendment requirements under subsection (d) of the Act.

The proposed rule states that the FBI is exempting the TSRS from subsection (g) ''to the extent that the system is exempt from other specific subsections of the Privacy Act.'' [17] Therefore, the TSRS is exempt from the civil remedies provisions only to extent that the TSRS is exempt from the underlying requirement to which the remedies relate. Because the FBI is claiming exemption from the record amendment requirement under subsection (d), it also is claiming exemption from the civil remedy provisions under subsection (g), as they relate to enforcement of subsection (d).

E. Extension of Opportunity for Public Comment

EPIC stated that the FBI should suspend this rulemaking and provide a further opportunity for public comment after the FBI has publicly released more information in response to EPIC's previously filed Freedom of Information Act (FOIA) request regarding the use of the TSDB for the Transportation Security Administration's proposed Secure Flight program.

Information about specific programs, such as Secure Flight, that will use the TSDB to perform terrorist screening may be informative in understanding the TSRS. The FBI does not believe, however, that this type of information is necessary to allow the public to engage in informed consideration of the issues raised by the proposed rule and the operation of the TSRS. Therefore, the FBI sees no basis to indefinitely suspend this rulemaking, pending the release of additional information about the Secure Flight program.

F. Routine Uses

EPIC and EFF/PA generally objected to the breadth of the routine uses set forth in the TSRS notice. EFF/PA stated that the FBI's intention to disclose only those records that are ''relevant'' in accordance with any current and future blanket routine uses established for FBI record systems fails to establish any limit on disclosure, because the FBI has exempted the TSRS from the requirement under subsection (e)(1) to maintain only relevant records. This comment incorrectly links the issue of whether the collection of a record is properly relevant to the accomplishment of an agency purpose and whether the disclosure of a record is relevant to the purpose of a routine use. By exempting the TSRS from the relevance requirement under subsection (e)(1), the FBI has permitted the collection of records whose relevance to the purpose of the TSRS may be unclear. The FBI is not, however, claiming that it will disclose a record without determining whether the record is relevant to the purpose of the routine use under which it is to be disclosed. By stating that the TSC will disclose only those records that are ''relevant'' in accordance with any current and future blanket routine uses established for FBI record systems, the FBI is limiting, not expanding, its ability to make disclosures of records in the TSRS.

EFF/PA objected to routine use (F) as allowing unlimited disclosure,

[13] OMB Guidelines, 40 FR 28971 (July 9, 1975).

[14] 5 U.S.C. 552a(e)(5).

[15] See Memorandum of Understanding on the Use and Integration of Screening Information to Protect Against Terrorism at 1, (Sept. 16, 2003).

[16] 5 U.S.C. 552a(g).

[17] 70 FR 43663 (July 28, 2005).

including to consumer reporting agencies. The FBI specifically states in the system of records notice that the TSC will not make disclosures to consumer reporting agencies. The FBI will not use general language of a routine use to override this specific statement. Furthermore, the language of routine use (F) limits its scope to disclosures that are in furtherance of the TSC's function. TSC anticipates that it will use this routine use in order to share information with other agencies and entities (other than consumer reporting agencies) to verify the quality and accuracy of its information.

EFF/PA objected to routine uses (J) and (K) because they permit disclosure of TSRS records to Governmental authorities with law enforcement responsibilities. EFF/PA argued that this allows TSC to make disclosures beyond the scope of the counterterrorism purposes of the TSRS.

The TSC maintains information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.[18] Terrorist activities are inherently criminal in nature. In addition, individuals engaged in preparation for terrorist acts engage in illegal activities that support the terrorist enterprise. Therefore, government authorities involved in law enforcement are integrally related to counterterrorism efforts. The FBI accordingly has written routine uses (J) and (K) to permit appropriate information sharing with such authorities.

G. Maintenance of Misidentified Person Information

EFF/PA stated that including information on misidentified persons in the TSRS has inherent privacy and civil liberties costs. EFF/PA suggested that instead of maintaining information on misidentified persons in order to avoid causing them inconvenience during the screening process, the Federal government should discontinue information-based terrorist screening. Alternatively, the FBI should segregate data on misidentified persons to avoid cross-contamination with data on persons of interest.

Whether the government should engage in information-based terrorist screening is beyond the scope of the issues raised for public comment through the TSRS system of records notice and this rulemaking. In implementing the directive of HSPD–6 to integrate information on known and appropriately suspected terrorists for use in screening processes, the FBI has determined that maintenance of information on misidentified persons is essential to carrying out this function in a fair and efficient manner. The FBI, therefore, has reflected its handling of such information in the TSRS notice and the proposed rule.

In order to maintain the integrity of the TSDB and avoid cross-contamination of information, data on misidentified persons is not maintained in the TSDB. All records containing information on misidentified persons are clearly marked, and the TSC has procedures in place to prevent the accidental inclusion of misidentified persons' data in TSC records on known or appropriately suspected terrorists. In addition, the TSC has attempted to mitigate any privacy and civil liberties costs associated with its use of misidentified persons' information through data quality and security assurance procedures.

Final Rule; Implementation of Routine Uses

After consideration of the public comments, the FBI has determined to issue the proposed rule in final form, with the changes described above. In addition, the FBI determined that none of the public comments merited changes to routine uses for the TSRS system of records prior to their implementation.

Regulatory Flexibility Act

This rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this rule.

Analysis of Regulatory Impacts

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12886. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Attorney General certifies that this rule would not have a significant economic impact on a substantial number of small entities, because the reporting requirements themselves are not changed and because it applies only to information on individuals.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

Executive Order 13132, Federalism

The FBI has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. This action 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, and therefore, will not have federalism implications.

Environmental Analysis

The FBI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

[18] HSPD–6 at 1.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, amend 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Section 16.96 is amended to add new paragraphs (r) and (s) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems'—limited access.

* * * * *

(r) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g):

(1) Terrorist Screening Records System (TSRS) (JUSTICE/FBI–019).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the counterterrorism purposes of this system, and the overall law enforcement process, the applicable exemption may be waived by the FBI in its sole discretion.

(s) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation. Similarly, disclosing this information to individuals who have been misidentified as known or suspected terrorists due to a close name similarity could reveal the Government's investigative interest in a terrorist suspect, because it could make known the name of the individual who actually is the subject of the Government's interest. Consequently, the Government has as great an interest in protecting the confidentiality of identifying information of misidentified persons as it does in protecting the confidentiality of the identities of known or suspected terrorists.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counterterrorism, investigatory and intelligence records. Compliance with these provisions could alert the subject of a terrorism investigation of the fact and nature of the investigation, and/or the investigative interest of the FBI and/or other intelligence or law enforcement agencies; compromise sensitive information classified in the interest of national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised. Similarly, compliance with these provisions with respect to records on individuals who have been misidentified as known or suspected terrorists due to a close name similarity could reveal the Government's investigative interest in a terrorist suspect, because it could make known the name of the individual who actually is the subject of the Government's interest.

(4) From subsection (e)(1) because it is not always possible for TSC to know in advance what information is relevant and necessary for it to complete an identity comparison between the individual being screened and a known or suspected terrorist. Also, because TSC and the FBI may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3), to the extent that this subsection is interpreted to require TSC to provide notice to an individual if TSC receives information about that individual from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic and foreign agency record systems and therefore it is not possible for the FBI and the TSC to vouch for their compliance with this provision; however, the TSC has implemented internal quality assurance procedures to ensure that TSC terrorist screening data is as thorough, accurate, and current as possible. In addition, TSC supports but does not conduct investigations; therefore, it must be able to collect information related to terrorist identities and encounters for distribution to law enforcement and intelligence agencies that do conduct terrorism investigations. In the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The

restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. The TSC has, however, implemented internal quality assurance procedures to ensure that TSC terrorist screening data is as thorough, accurate, and current as possible. The FBI also is exempting the TSRS from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the TSRS. The FBI has exempted TSRS records from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of counterterrorism investigations. Exempting the TSRS from subsection (e)(5) serves to prevent the assertion of challenges to a record's accuracy, timeliness, completeness, and/or relevance under subsection (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the FBI and the TSC and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 22, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 05–23568 Filed 12–1–05; 8:45 am]

BILLING CODE 4410–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

RIN 1212–AA55

Valuation of Benefits; Mortality Assumptions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its benefit valuation regulation by adopting more current mortality assumptions. The mortality assumptions prescribed under PBGC's regulations to be used to value benefits for non-disabled (''healthy'') participants are taken from the 1983 Group Annuity Mortality (GAM–83) Tables. The PBGC published a final rule adopting these tables in 1993, noting that many private-sector insurers used the GAM–83 Tables when setting group annuity prices. At that time, the PBGC also said that it intended to keep each of its individual valuation assumptions in line with those of private-sector insurers, and to modify its mortality assumptions whenever it is necessary to do so to achieve consistency with the private insurer assumptions. This rule updates those assumptions by replacing a version of the GAM–83 Tables with a version of the GAM–94 Tables. The updated mortality assumptions will better conform to those used by private-sector insurers in pricing group annuities.

DATES: Effective January 1, 2006. For a discussion of applicability of the amendments, see the Applicability section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James J. Armbruster, Acting Director, Legislative and Regulatory Department, or James L. Beller, Jr., Attorney, Legislative and Regulatory Department, PBGC, 1200 K Street, N.W., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On March 14, 2005 (at 70 FR 12429), the Pension Benefit Guaranty Corporation (PBGC) published a proposed rule modifying 29 CFR part 4044 (Allocation of Assets in Single-employer Plans). The PBGC received one comment letter on the proposed rule (which is addressed below) and is issuing the final regulation as proposed.

The PBGC's regulations provide rules for valuing benefits in a single-employer plan that terminates in a distress or involuntary termination. (The rules are codified at 29 CFR part 4044, subpart B.) The PBGC uses these rules to determine: (1) The extent to which participants' benefits are funded under the allocation rules of ERISA section 4044, (2) whether a plan is sufficient for guaranteed benefits, and (3) how much an employer owes the PBGC as a result of a plan termination under ERISA section 4062. Employers must use these rules to determine the value of plan benefit liabilities in annual reports required to be submitted under ERISA section 4010, and may use these rules to ensure that plan spinoffs, mergers, and transfers comply with Internal Revenue Code section 414(l).

General Valuation Approach

The valuation rules prescribe a number of assumptions intended to produce reasonable valuation results on average for the range of plans terminating in distress or involuntary terminations, rather than for any particular plan or plan type. The assumptions prescribed by this rule for valuing benefits in terminating plans match the private-sector annuity market to the extent possible.

The market cost of providing annuity benefits is based upon data from periodic surveys conducted for the PBGC by the American Council of Life Insurers (the ACLI surveys). These ACLI surveys ask insurers for pricing information on group annuities. Each respondent to the surveys provides its prices (net of administrative expenses) for a range of ages for immediate annuities (annuities where payments start immediately) and for deferred annuities (annuities where payments are deferred to age 65). Prices of each of the two types of annuities are averaged at each age to get an average market price. Interest factors are derived so that, when combined with the PBGC's healthy-life mortality assumptions, they provide the best fit for the average market prices (as obtained from the ACLI surveys) over the entire range of ages. The interest factors are recalibrated to the annuity survey prices each year. Each month between recalibrations, the interest factors are adjusted based on changes in the yield on long-term corporate investment-grade bonds. The interest factors are then used in conjunction with the PBGC's mortality assumptions (and other PBGC assumptions) to value annuity benefits.

These derived interest factors are not market interest rates. The factors stand in for all the many components used in annuity pricing that are not reflected in the given mortality table—*e.g.*, assumed yield on investment, margins for profit and contingencies, premium and income taxes, and marketing and sales expenses. Because of the relationship among annuity prices, a mortality table, and the derived interest factors, it is never meaningful to compare PBGC's interest factors to market interest rates. The PBGC's interest factors are meaningful only in combination with the PBGC's mortality assumptions.

Mortality Assumptions

One set of assumptions prescribed by the valuation regulation relates to the probabilities that a participant (or beneficiary) will survive to each

expected benefit payment date, *i.e.*, mortality assumptions. The mortality assumptions now used to value benefits for non-disabled (''healthy'') participants are taken from the 1983 Group Annuity Mortality (GAM–83) Tables. The PBGC published a final rule adopting these tables in 1993, noting in the preamble to the proposed rule, 58 FR 5128, 5129 (January 19, 1993), that many private-sector insurers used the GAM–83 Tables when setting group annuity prices. The PBGC also said (at 58 FR 5129) that it intended ''to keep each of its individual valuation assumptions in line with those of private-sector insurers, and to modify its mortality assumptions whenever it is necessary to do so to achieve consistency with the private insurer assumptions.'' These mortality assumptions have not been updated since 1993.

As noted, the ACLI periodically conducts surveys, on behalf of the PBGC, of insurers who provide group annuity contracts for information on how they price group annuities. In addition to other pricing questions, the ACLI from time to time has asked for information on which mortality tables the insurers use when pricing group annuities in pension plans. A majority of respondents indicated that, as of March 31, 2002, they use a version of the 1994 Group Annuity Mortality Basic (GAM–94 Basic) Table and project future improvements in mortality with projection scale AA. Similarly, the Society of Actuaries sponsored a survey of pricing actuaries for insurers who provide group annuity contracts and found that five of the ten respondents used a version of the GAM–94 Table and six of the ten used an unloaded (*i.e.*, basic) table. 30-Year Treasury Rates and Defined Benefit Plans, August 22, 2001, p.5. That survey also found that most of the surveyed companies projected future improvements and that the most common projection scale was AA.

Based on these surveys, this regulation adopts the GAM–94 Basic Table as the basis for the healthy-life mortality assumptions to be used for PBGC valuations of plan benefits. Specifically, for a particular valuation, the regulation prescribes the use of the GAM–94 Basic Table projected to the year of that valuation plus 10 years using Scale AA. The updated mortality assumptions will result in interest factors that, when combined with those updated mortality assumptions, will provide prices that match the ACLI survey prices more closely across the entire range of ages than had GAM–83 been used.

The regulation prescribes a projected mortality table to take into account expected improvements in mortality. While it would be ideal to reflect mortality improvement through the use of a fully generational mortality table (*i.e.*, a table that provides for full generational mortality improvement), this would be unduly complex.[1] A fully generational table is constructed from a group of static tables. For example, the value of an annuity payable to a participant beginning at age 65 in 2007 would be calculated from a 2007 static table for the probability of death at age 65, a 2008 static table for the probability of death at age 66, a 2009 static table for the probability of death at age 67, etc.

One method of approximating the effect of full generational mortality improvement is to project the current table for a specified number of years and use the resulting table without further projection. The number of years of projection would be equal to the years to the valuation date plus the duration of liabilities. This rule adopts this approach. A mortality table that includes projection for the liability duration takes into account expected mortality improvements and achieves results very close to those of a fully generational table but in a much less complex manner.

The regulation calls for the use of mortality tables projected to the year of valuation plus 10 years as a rough approximation for the duration of liabilities in plans that terminate in distress or involuntary terminations. Thus, for a valuation in 2006, mortality is projected to the year 2016 for each age. For a valuation in 2007, mortality is projected to the year 2017. For example, the probability of death for a 65-year-old healthy male to be used in a valuation in 2006 would be calculated as follows: $.015629 \times (1 - .014)^{(2006 - 1994 + 10)} = .011461$. The PBGC will publish the projected mortality tables on its Web site (*www.pbgc.gov*).

There is no reason to expect that the mortality tables under this regulation will match the tables that are prescribed for certain funding purposes under Treasury Regulations at any point in time. The PBGC's mortality tables are based on the mortality experience of group annuitants. In contrast, the tables to be used for certain minimum funding purposes are based on the mortality experience of individuals covered by pension plans.

[1] In response to the 1997 Notice of Intent to Propose Rulemaking, one commenter asked for the adoption of a static table rather than a generational table to avoid unnecessary complexity.

Because of the way the PBGC's interest factors are determined, the choice of mortality assumptions generally is expected to have no significant effect on benefit valuations. The effect that a change in mortality assumptions will have on valuations generally will be offset by the effect of the corresponding change in the interest factors. For example, the use of GAM–94 mortality assumptions will result in higher interest factors than would the use of GAM–83 mortality assumptions (because GAM–94 has lower mortality rates than GAM–83). When those higher interest factors are combined with GAM–94, the resulting value for a given benefit will generally be about the same as it would be using GAM–83 along with the lower interest factors derived from the ACLI survey prices using GAM–83. (For a more detailed explanation, see the preambles to the PBGC's proposed rule published on January 19, 1993, at 58 FR 5128, and final rule published on September 28, 1993, at 58 FR 50812.)

In addition to the mortality assumptions for healthy individuals, the current regulation provides two other sets of mortality assumptions: (1) Those for participants who are disabled under a plan provision requiring eligibility for Social Security disability benefits (Social Security disabled participants), and (2) those for participants who are disabled under a plan provision that does *not* require eligibility for Social Security disability benefits (non-Social Security disabled participants).

As with the mortality assumptions for healthy individuals, this rule updates the mortality assumptions used for disabled participants. For Social Security disabled participants, the regulation calls for the use of the Mortality Tables for Disabilities Occurring in Plan Years Beginning After December 31, 1994, from Rev. Rul. 96–7 (1996–1 C.B. 59). These tables were developed by the Internal Revenue Service as required by the Retirement Protection Act of 1994 amendments relating to the determination of current liability. For non-Social Security disabled participants, the regulation calls for the use of the healthy life tables projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA and setting the resulting table forward three years. In addition, in order to prevent the rates at the older ages from exceeding the corresponding rates in the proposed table for Social Security disabled participants, the mortality rate for non-Social Security disabled participants is capped at the corresponding rate for Social Security disabled participants.

For convenience, the PBGC will make all of these mortality tables (like the healthy-life mortality tables) available on its Web site (*www.pbgc.gov*).

The rule also makes a clarifying change to this regulation to reflect the PBGC's practice of treating a participant as a disabled participant (Social Security disabled and non-Social Security disabled, whichever is applicable) if on the valuation date the participant is under age 65 and has a benefit that was converted under the plan's terms from a disability benefit to an early or normal retirement benefit for any reason other than a change in the participant's health status.

In addition, for clarity, paragraph 4044.52(d) is expressed more simply and moved to paragraph 4044.53(g). That paragraph, which deals with mortality when valuing deferred joint annuities, is being moved from the subsection that deals generally with valuation to the subsection that deals specifically with mortality.

Comments on Notice of Intent To Propose Rulemaking

In developing the proposed rule, the PBGC considered the comments relating to its mortality assumptions that it received in response to its notice of intent to propose rulemaking issued on March 19, 1997 (62 FR 12982). The proposed rule adopted a number of the suggestions made by commenters. For instance, one commenter suggested that the regulation should not call for the use of a reserving table (*i.e.*, a table that includes a built-in margin to provide a cushion for reserving purposes). Another commenter asked for the adoption of a static table rather than a generational table. This final rule adopts basic (nonreserve) tables that approximate the effect of full generational mortality improvements without the complexity of a fully generational table.

Several commenters asked that the rule provide mortality assumptions that vary depending on industry or workforce type or that vary on a plan-specific basis. The proposed rule did not adopt either of these approaches. As discussed above and in the proposed rule, the mortality assumptions are selected with the goal of achieving consistency with the mortality assumptions used by private-sector insurers for pricing group annuity contracts. To this end, ACLI respondents were asked to identify the mortality tables they used and any variations to those tables. Neither the proposed GAM–94 Basic Table, the most commonly identified table, nor any of the other tables identified by the survey respondents provided mortality assumptions that vary depending on industry or workforce type. Moreover, none of the survey respondents reported that they make modifications or adjustments based on industry or workforce type. As for the use of plan-specific mortality assumptions, the general valuation approach is to apply a common set of assumptions (*e.g.*, mortality, expected retirement age) to all plans with the goal of producing reasonable results *on average*. Shifting to a plan-specific approach for mortality would be a fundamental change that could require burdensome verification procedures. Therefore, the PBGC proposed to continue to use more general mortality assumptions that, like its other assumptions, produce reasonable results on average. (No comments were received on the proposed rule with respect to this issue.)

Comments on Proposed Rule

One comment letter on the proposed rule was received. The commenter, an actuary in private practice, asserted that the GAM–94 Basic Table is not widely available and asked the PBGC to explain this table more clearly and to publish the exact Qs (mortality rates). The commenter also suggested that the PBGC should clarify why the proposed rates tables for Social Security disabled lives, which differ from other popular rates tables for disabled lives (for example, the RP–2000 disabled life mortality table), are appropriate.

The GAM–94 Basic Table is also known as the 1994 Uninsured Pensioner Mortality Table (UP–94), which is widely available; for example, it is included in the Society of Actuaries' mortality table software, ''Table Manager.'' The GAM–94 Basic Table, with specific Qs and the projection scale, was part of the proposed rule (and is included in this final rule). In addition, as stated above and in the proposed rule, the PBGC will publish the projected mortality tables on its Web site (*www.pbgc.gov*).

The rule calls for the use of rates from the Mortality Tables for Disabilities Occurring in Plan Years Beginning After December 31, 1994, from Rev. Rul. 96–7 (1996–1 C.B. 59) for Social Security disabled participants, because those rates were developed based on the Social Security Administration's experience for individuals who are receiving benefits under its program. These tables differ from certain other popular tables (in particular, the RP–2000 table), which are based on a population of all disabled lives, rather than the narrower population of Social Security disabled lives.

Applicability

These amendments apply to any plan with a termination date on or after January 1, 2006.

Other Changes to Valuation Regulation

The PBGC will continue to explore other ways to improve its benefit valuation regulations and may make other changes through separate rulemaking actions.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget, therefore, has reviewed this rule under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. As explained earlier in this preamble, the effect on a plan valuation of the change in the PBGC's mortality assumptions will be offset by the effect on that plan's valuation of the PBGC's use of higher interest factors. Because of this offsetting effect, the PBGC does not expect this rule to have a significant economic impact on a substantial number of entities of any size. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

This final rule contains no collection of information requirements within the meaning of the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 4044

Employee benefits plans, Pension insurance, Pensions.

■ For the reasons set forth above, the PBGC amends part 4044 of 29 CFR chapter XL as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

■ 2. Amend § 4044.52 by adding the word ''and'' to the end of paragraph (c), removing paragraph (d), and redesignating paragraph (e) as paragraph (d).

■ 3. Revise § 4044.53 to read as follows:

4044.53 Mortality assumptions.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), (e), (f), and (g) of this section to value benefits under § 4044.52.

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) The mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) The mortality rates under paragraph (c) of this section to represent the mortality of the death beneficiary.

(c) *Healthy lives.* If the individual is not disabled under paragraph (f) of this section, the plan administrator will value the benefit using—

(1) For male participants, the rates in Table 1 of Appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 2 of Appendix A to this part; and

(2) For female participants, the rates in Table 3 of Appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 4 of Appendix A to this part.

(d) *Social Security disabled lives.* If the individual is Social Security disabled under paragraph (f)(1) of this section, the plan administrator will value the benefit using—

(1) For male participants, the rates in Table 5 of Appendix A to this part; and

(2) For female participants, the rates in Table 6 of Appendix A to this part.

(e) Non-Social Security disabled lives. If the individual is non-Social Security disabled under paragraph (f)(2) of this section, the plan administrator will value the benefit at each age using—

(1) For male participants, the lesser of—

(i) The rate determined from Table 1 of Appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 2 of Appendix A to this part and setting the resulting table forward three years, or

(ii) The rate in Table 5 of Appendix A to this part.

(2) For female participants, the lesser of—

(i) The rate determined from Table 3 of Appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 4 of Appendix A to this part and setting the resulting table forward three years, or

(ii) The rate in Table 6 of Appendix A to this part.

(f) *Definitions of disability.*

(1) *Social Security disabled.* A participant is Social Security disabled if, on the valuation date, the participant is less than age 65 and has a benefit in pay status that—

(i) Is being received as a disability benefit under a plan provision requiring either receipt of or eligibility for Social Security disability benefits, or

(ii) Was converted under the plan's terms from a disability benefit under a plan provision requiring either receipt of or eligibility for Social Security disability benefits to an early or normal retirement benefit for any reason other than a change in the participant's health status.

(2) *Non-Social Security disabled.* A participant is non-Social Security disabled if, on the valuation date, the participant is less than age 65, is not Social Security disabled, and has a benefit in pay status that—

(i) Is being received as a disability benefit under the plan, or

(ii) Was converted under the plan's terms from a disability benefit to an early or normal retirement benefit for any reason other than a change in the participant's health status.

(g) *Contingent annuitant mortality during deferral period.* If a participant's joint and survivor benefit is valued as a deferred annuity, the mortality of the contingent annuitant during the deferral period will be disregarded.

■ 4. Revise Appendix A to part 4044 to read as follows:

Appendix A to Part 4044—Mortality Rate Tables

The mortality tables in this appendix set forth that for each age x the probability q_X that an individual aged x (in 1994, when using Table 1 or Table 3) will not survive to attain age x + 1. The projection scales in this appendix set forth for each age x the annual reduction AA_X in the mortality rate at age x.

TABLE 1.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

[94 GAM basic]

Age x	q_X
15	0.000371
16	0.000421
17	0.000463
18	0.000495
19	0.000521
20	0.000545
21	0.000570
22	0.000598
23	0.000633
24	0.000671
25	0.000711
26	0.000749
27	0.000782
28	0.000811
29	0.000838
30	0.000862
31	0.000883
32	0.000902
33	0.000912
34	0.000913
35	0.000915
36	0.000927
37	0.000958
38	0.001010
39	0.001075
40	0.001153
41	0.001243
42	0.001346
43	0.001454
44	0.001568
45	0.001697
46	0.001852
47	0.002042
48	0.002260
49	0.002501
50	0.002773
51	0.003088
52	0.003455
53	0.003854
54	0.004278
55	0.004758
56	0.005322
57	0.006001
58	0.006774
59	0.007623
60	0.008576
61	0.009663
62	0.010911
63	0.012335
64	0.013914
65	0.015629
66	0.017462
67	0.019391
68	0.021354
69	0.023364
70	0.025516
71	0.027905
72	0.030625
73	0.033549
74	0.036614
75	0.040012
76	0.043933
77	0.048570
78	0.053991
79	0.060066
80	0.066696
81	0.073780
82	0.081217
83	0.088721
84	0.096358

TABLE 1.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS—Continued

[94 GAM basic]

Age x	q_x
85	0.104559
86	0.113755
87	0.124377
88	0.136537
89	0.149949
90	0.164442
91	0.179849
92	0.196001
93	0.213325
94	0.231936
95	0.251189
96	0.270441
97	0.289048
98	0.306750
99	0.323976
100	0.341116
101	0.358560
102	0.376699
103	0.396884
104	0.418855
105	0.440585
106	0.460043
107	0.475200
108	0.485670
109	0.492807
110	0.497189
111	0.499394
112	0.500000
113	0.500000
114	0.500000
115	0.500000
116	0.500000
117	0.500000
118	0.500000
119	0.500000
120	1.000000

TABLE 2.—PROJECTION SCALE AA FOR HEALTHY MALE PARTICIPANTS

Age x	AA_x
15	0.019
16	0.019
17	0.019
18	0.019
19	0.019
20	0.019
21	0.018
22	0.017
23	0.015
24	0.013
25	0.010
26	0.006
27	0.005
28	0.005
29	0.005
30	0.005
31	0.005
32	0.005
33	0.005
34	0.005
35	0.005
36	0.005
37	0.005
38	0.006
39	0.007
40	0.008
41	0.009
42	0.010
43	0.011
44	0.012
45	0.013
46	0.014
47	0.015
48	0.016
49	0.017
50	0.018
51	0.019
52	0.020
53	0.020
54	0.020
55	0.019
56	0.018
57	0.017
58	0.016
59	0.016
60	0.016
61	0.015
62	0.015
63	0.014
64	0.014
65	0.014
66	0.013
67	0.013
68	0.014
69	0.014
70	0.015
71	0.015
72	0.015
73	0.015
74	0.015
75	0.014
76	0.014
77	0.013
78	0.012
79	0.011
80	0.010
81	0.009
82	0.008
83	0.008
84	0.007
85	0.007
86	0.007
87	0.006
88	0.005
89	0.005
90	0.004
91	0.004
92	0.003
93	0.003
94	0.003
95	0.002
96	0.002
97	0.002
98	0.001
99	0.001
100	0.001
101	0.000
102	0.000
103	0.000
104	0.000
105	0.000
106	0.000
107	0.000
108	0.000
109	0.000

TABLE 2.—PROJECTION SCALE AA FOR HEALTHY MALE PARTICIPANTS—Continued

Age x	AA_x
110	0.000
111	0.000
112	0.000
113	0.000
114	0.000
115	0.000
116	0.000
117	0.000
118	0.000
119	0.000
120	0.000

TABLE 3.—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS

[94 GAM Basic]

Age x	q_x
15	0.000233
16	0.000261
17	0.000281
18	0.000293
19	0.000301
20	0.000305
21	0.000308
22	0.000311
23	0.000313
24	0.000313
25	0.000313
26	0.000316
27	0.000324
28	0.000338
29	0.000356
30	0.000377
31	0.000401
32	0.000427
33	0.000454
34	0.000482
35	0.000514
36	0.000550
37	0.000593
38	0.000643
39	0.000701
40	0.000763
41	0.000826
42	0.000888
43	0.000943
44	0.000992
45	0.001046
46	0.001111
47	0.001196
48	0.001297
49	0.001408
50	0.001536
51	0.001686
52	0.001864
53	0.002051
54	0.002241
55	0.002466
56	0.002755
57	0.003139
58	0.003612
59	0.004154
60	0.004773
61	0.005476
62	0.006271
63	0.007179
64	0.008194

TABLE 3.—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS—Continued

[94 GAM Basic]

Age x	q_x
65	0.009286
66	0.010423
67	0.011574
68	0.012648
69	0.013665
70	0.014763
71	0.016079
72	0.017748
73	0.019724
74	0.021915
75	0.024393
76	0.027231
77	0.030501
78	0.034115
79	0.038024
80	0.042361
81	0.047260
82	0.052853
83	0.058986
84	0.065569
85	0.072836
86	0.081018
87	0.090348
88	0.100882
89	0.112467
90	0.125016
91	0.138442
92	0.152660
93	0.167668
94	0.183524
95	0.200229
96	0.217783
97	0.236188
98	0.255605
99	0.276035
100	0.297233
101	0.318956
102	0.340960
103	0.364586
104	0.389996
105	0.415180
106	0.438126
107	0.456824
108	0.471493
109	0.483473
110	0.492436
111	0.498054
112	0.500000
113	0.500000
114	0.500000
115	0.500000
116	0.500000
117	0.500000
118	0.500000
119	0.500000
120	1.000000

TABLE 4.—PROJECTION SCALE AA FOR HEALTHY FEMALE PARTICIPANTS

Age x	AA_x
15	0.016
16	0.015
17	0.014
18	0.014
19	0.015
20	0.016
21	0.017
22	0.017
23	0.016
24	0.015
25	0.014
26	0.012
27	0.012
28	0.012
29	0.012
30	0.010
31	0.008
32	0.008
33	0.009
34	0.010
35	0.011
36	0.012
37	0.013
38	0.014
39	0.015
40	0.015
41	0.015
42	0.015
43	0.015
44	0.015
45	0.016
46	0.017
47	0.018
48	0.018
49	0.018
50	0.017
51	0.016
52	0.014
53	0.012
54	0.010
55	0.008
56	0.006
57	0.005
58	0.005
59	0.005
60	0.005
61	0.005
62	0.005
63	0.005
64	0.005
65	0.005
66	0.005
67	0.005
68	0.005
69	0.005
70	0.005
71	0.006
72	0.006
73	0.007
74	0.007
75	0.008
76	0.008
77	0.007
78	0.007
79	0.007
80	0.007
81	0.007
82	0.007
83	0.007
84	0.007
85	0.006
86	0.005
87	0.004
88	0.004
89	0.003

TABLE 4.—PROJECTION SCALE AA FOR HEALTHY FEMALE PARTICIPANTS—Continued

Age x	AA_x
90	0.003
91	0.003
92	0.003
93	0.002
94	0.002
95	0.002
96	0.002
97	0.001
98	0.001
99	0.001
100	0.001
101	0.000
102	0.000
103	0.000
104	0.000
105	0.000
106	0.000
107	0.000
108	0.000
109	0.000
110	0.000
111	0.000
112	0.000
113	0.000
114	0.000
115	0.000
116	0.000
117	0.000
118	0.000
119	0.000
120	0.000

TABLE 5.—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED MALE PARTICIPANTS

Age x	q_x
15	0.022010
16	0.022502
17	0.023001
18	0.023519
19	0.024045
20	0.024583
21	0.025133
22	0.025697
23	0.026269
24	0.026857
25	0.027457
26	0.028071
27	0.028704
28	0.029345
29	0.029999
30	0.030661
31	0.031331
32	0.032006
33	0.032689
34	0.033405
35	0.034184
36	0.034981
37	0.035796
38	0.036634
39	0.037493
40	0.038373
41	0.039272
42	0.040189
43	0.041122
44	0.042071

TABLE 5.—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED MALE PARTICIPANTS—Continued

Age x	q_x
45	0.043033
46	0.044007
47	0.044993
48	0.045989
49	0.046993
50	0.048004
51	0.049021
52	0.050042
53	0.051067
54	0.052093
55	0.053120
56	0.054144
57	0.055089
58	0.056068
59	0.057080
60	0.058118
61	0.059172
62	0.060232
63	0.061303
64	0.062429
65	0.063669
66	0.065082
67	0.066724
68	0.068642
69	0.070834
70	0.073284
71	0.075979
72	0.078903
73	0.082070
74	0.085606
75	0.088918
76	0.092208
77	0.095625
78	0.099216
79	0.103030
80	0.107113
81	0.111515
82	0.116283
83	0.121464
84	0.127108
85	0.133262
86	0.139974
87	0.147292
88	0.155265
89	0.163939
90	0.173363
91	0.183585
92	0.194653
93	0.206615
94	0.219519
95	0.234086
96	0.248436
97	0.263954
98	0.280803
99	0.299154
100	0.319185
101	0.341086
102	0.365052
103	0.393102
104	0.427255
105	0.469531
106	0.521945
107	0.586518
108	0.665268
109	0.760215
110	1.000000

TABLE 6.—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED FEMALE PARTICIPANTS

Age x	q_x
15	0.007777
16	0.008120
17	0.008476
18	0.008852
19	0.009243
20	0.009650
21	0.010076
22	0.010521
23	0.010984
24	0.011468
25	0.011974
26	0.012502
27	0.013057
28	0.013632
29	0.014229
30	0.014843
31	0.015473
32	0.016103
33	0.016604
34	0.017121
35	0.017654
36	0.018204
37	0.018770
38	0.019355
39	0.019957
40	0.020579
41	0.021219
42	0.021880
43	0.022561
44	0.023263
45	0.023988
46	0.024734
47	0.025504
48	0.026298
49	0.027117
50	0.027961
51	0.028832
52	0.029730
53	0.030655
54	0.031609
55	0.032594
56	0.033608
57	0.034655
58	0.035733
59	0.036846
60	0.037993
61	0.039176
62	0.040395
63	0.041653
64	0.042950
65	0.044287
66	0.045666
67	0.046828
68	0.048070
69	0.049584
70	0.051331
71	0.053268
72	0.055356
73	0.057573
74	0.059979
75	0.062574
76	0.065480
77	0.068690
78	0.072237
79	0.076156
80	0.080480
81	0.085243
82	0.090480
83	0.096224
84	0.102508

TABLE 6.—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED FEMALE PARTICIPANTS—Continued

Age x	q_x
85	0.109368
86	0.116837
87	0.124948
88	0.133736
89	0.143234
90	0.153477
91	0.164498
92	0.176332
93	0.189011
94	0.202571
95	0.217045
96	0.232467
97	0.248870
98	0.266289
99	0.284758
100	0.303433
101	0.327385
102	0.359020
103	0.395842
104	0.438360
105	0.487816
106	0.545886
107	0.614309
108	0.694884
109	0.789474
110	1.000000

Issued in Washington, DC, this 29 day of November, 2005.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 05–23554 Filed 12–1–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AL86

Dependency and Indemnity Compensation: Surviving Spouse's Rate; Payments Based on Veteran's Entitlement to Compensation for Service-Connected Disability Rated Totally Disabling for Specified Periods Prior to Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning payment of dependency and indemnity compensation (DIC) for certain non-

service-connected deaths and the rate of DIC payable to a surviving spouse for either service-connected or non-service-connected deaths. The purpose of this final rule is to clarify VA's interpretation of two similar statutes that provide for payments to the survivors of veterans who were, at the time of death, in receipt of or entitled to receive disability compensation for service-connected disability that was rated totally disabling for a specified period prior to death. This rule also reorganizes and revises the regulations governing surviving spouses' DIC rates and revises the Board of Veterans' Appeals rule concerning the effect of unfavorable decisions during a veteran's lifetime on claims for death benefits by the veteran's survivors.

DATES: *Effective Date:* This rule is effective December 2, 2005.

Applicability Date: VA will apply this rule to claims pending before VA on the effective date of this rule, as well as to claims filed after that date.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 273–7211.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of October 25, 2004 (69 FR 62229), VA proposed to revise its DIC regulations to clarify and harmonize VA's interpretation of two statutory provisions. We further proposed to reorganize and restate existing regulations to make them easier to understand and apply.

DIC is a benefit paid to survivors of veterans in cases of death due to service-connected disability or certain cases of death due to non-service-connected disability. Section 1318(b) of title 38, United States Code, provides in effect that, if the veteran's death is not caused by a service-connected disability, DIC is payable only if the veteran was in receipt of or ''entitled to receive'' compensation at the time of death for a service-connected disability that was continuously rated totally disabling for a period of 10 or more years immediately preceding death, or for a period of not less than five years from the date of the veteran's discharge or release from active duty, or for a period of not less than one year immediately preceding death if the veteran was a former prisoner of war. VA has implemented this provision through regulations at 38 CFR 3.22, paragraph (b) of which explains that the phrase ''entitled to receive'' refers to circumstances in which the veteran, at the time of his or her death, had service-connected disability that was rated totally disabling by VA, but was not receiving compensation for one of seven specified reasons, including the fact that the veteran had applied for compensation during his or her lifetime but had not received total disability compensation due to a clear and unmistakable error (CUE) in a VA decision.

We proposed to revise § 3.22(b) in two respects. First, we proposed to revise ambiguous language in § 3.22(b) to clarify that the correction of CUE may establish that a veteran was ''entitled to receive'' benefits ''at the time of death'' irrespective of whether the CUE is corrected before or after the veteran's death. We explained that the statutory requirement that the veteran have been entitled to benefits ''at the time of death'' would be satisfied in such cases because 38 U.S.C. 5109A and 7111 mandate that decisions correcting CUE must be given full retroactive effect as a matter of law.

Second, we proposed to add an eighth circumstance in which a veteran may be found to have been ''entitled to receive'' compensation at the time of death for a disability that was continuously rated totally disabling for the specified period preceding death. We proposed to state that service department records that existed at the time of a prior final VA decision but were not previously considered by VA (hereinafter referenced as ''newly identified service department records'') may support a finding that the veteran was ''entitled to receive'' compensation at the time of death for a disability that was rated totally disabling for the specified period. We explained that the proposed rule would apply to such service department records received by VA before or after a veteran's death, if the records established a basis for assigning a total disability rating for the retroactive period specified in 38 U.S.C. 1318(b). We stated that, similar to awards based on correction of CUE, awards based on such newly identified service department records may be made retroactive as a matter of law, as provided in long-standing VA regulations at 38 CFR 3.156(c) and 3.400(q)(2).

Under section 1311(a)(2) of title 38, United States Code, if a veteran's survivor is entitled to DIC based on either service-connected or non-service-connected death, the basic monthly rate of DIC payable to the survivor may be increased by a specified amount if the veteran at the time of death was in receipt of or was ''entitled to receive'' compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death. VA previously implemented this provision through regulations in 38 CFR 3.5(e)(1). Unlike § 3.22, however, § 3.5(e)(1) did not define or elaborate upon the phrase ''entitled to receive.''

In view of the substantially similar language and common derivation of 38 U.S.C. 1311(a)(2) and 1318(b), VA has concluded that the statutes should be given a similar construction, and the United States Court of Appeals for the Federal Circuit (Federal Circuit) upheld that determination in *National Organization of Veterans' Advocates, Inc.* v. *Secretary of Veterans Affairs*, 314 F.3d 1373, 1378 (Fed. Cir. 2003) (''*NOVA*''). In its *NOVA* decision, however, the Federal Circuit criticized VA for not elaborating the meaning of the phrase ''entitled to receive'' in § 3.5(e)(1), as VA had done in § 3.22. NOVA at 1381. The court ordered VA to undertake further rulemaking to harmonize those regulations.

In our October 2004 proposed rule, we proposed to remove the provisions in 38 CFR 3.5(e) and to replace them with new 38 CFR 3.10. We proposed to reorganize and restate more clearly in new § 3.10 several provisions specifying the amounts of DIC payable to surviving spouses of veterans. We also proposed to include in new § 3.10(f)(3) a definition of the phrase ''entitled to receive'' that would parallel the definition set forth in § 3.22(b), as revised by this rule.

VA also proposed to revise 38 CFR 20.1106, which provides generally that claims for death benefits by a veteran's survivor will be decided without regard to decisions rendered during the veteran's lifetime. The rule historically has contained an express exception for claims under section 1318, but not for claims under section 1311. To ensure that those two statutes are applied consistently, we proposed to revise § 20.1106 to exempt claims under either section 1311 or 1318.

Finally, the Federal Circuit's order in *NOVA* directed VA to address, in this rule, whether a survivor may establish entitlement to DIC under 38 U.S.C. 1311(a)(2) and 1318 by submitting new and material evidence after a veteran's death in order to reopen a claim filed by the veteran during his or her lifetime. *NOVA* at 1380–1381. The Federal Circuit stated that VA's current regulation at 38 CFR 3.22 reasonably recognizes the correction of CUE as a basis for revisiting final decisions made during a veteran's lifetime and

satisfying the durational disability requirement in 38 U.S.C. 1318(b). *NOVA* at 1380–1381. However, the court stated that the correction of CUE is only one of the two statutory bases for revisiting final decisions, and that VA had failed to explain whether the durational disability requirements could be met under the other exception, which involves the submission of new and material evidence to reopen a previously denied claim. *NOVA* at 1380–1381.

Our notice of proposed rulemaking explained that the submission of new and material evidence (other than newly identified service department records) after a veteran's death could not establish that the veteran was ''entitled to receive'' benefits for any past period. We explained that there were fundamental differences between the two statutory exceptions to finality and that those distinctions were significant in the context of claims under 38 U.S.C. 1311(a)(2) and 1318(b), which depend upon whether a veteran was ''entitled to receive'' benefits for past periods. The correction of CUE is a remedy for error committed by VA in a prior final decision. By statute, a decision correcting CUE has full retroactive effect irrespective of when the CUE claim is brought. Accordingly, a CUE claim brought after a veteran's death may establish that the veteran was entitled as a matter of law to have received benefits during his or her lifetime.

In contrast, a reopening based on new and material evidence (other than newly identified service department records) is not a retroactive correction of a prior final decision, but is instead a means for establishing prospective entitlement to benefits despite a prior final denial. Pursuant to 38 U.S.C. 5110(a), the effective date of an award based on a reopened claim ''shall not be earlier than the date of receipt of application therefore.'' Accordingly, the Federal Circuit has held that VA regulations reasonably provide that reopening with new and material evidence of a previously denied claim generally may not operate retroactively. *See Sears* v. *Principi*, 349 F.3d 1326, 1330 (Fed. Cir. 2003), *cert. denied*, 124 S. Ct. 1723 (2004). The United States Court of Appeals for Veterans Claims (CAVC) has explained that a reopening ''is not a reactivation of the previous claim, based upon the original application for benefits'' and that ''even upon a reopening, the prior claim is still 'final' in a sense'' because any award based on the reopening can be effective no earlier than the date of the application to reopen. *Spencer* v. *Brown*, 4 Vet. App. 283, 293 (1993), *aff'd*, 17 F.3d 368 (Fed. Cir. 1994). Accordingly, even if new and material evidence could show as a factual matter that any veteran was totally disabled due to service-connected disability during prior periods, such evidence could not establish that the veteran was entitled to receive benefits from VA for such past periods.

We concluded that, because awards based on new and material evidence generally cannot establish retroactive entitlement to benefits, a survivor seeking DIC under section 1311(a)(2) or 1318(b) generally cannot rely upon new and material evidence for the purpose of showing that a veteran was ''entitled to receive'' VA compensation for past periods. As noted above, the only exception to this general principle relates to circumstances in which newly identified service department records are submitted after a claim was finally denied. Because long-standing VA regulations authorize retroactive benefit entitlement based on such service department records, the proposed rule explained that new service department records submitted after a veteran's death may show that the veteran was ''entitled to receive'' total disability compensation for periods prior to death.

Although the Federal Circuit's NOVA decision refers to the possibility of a DIC claimant ''reopening'' a deceased veteran's claim based on either CUE or new and material evidence, we note that a survivor's DIC claim is not actually a ''reopening'' of the decedent's claim for disability compensation because a veteran's claim does not survive his or her death. *See Richard* v. *West*, 161 F.3d 719, 721–22 (Fed. Cir. 1998). Rather, the survivor's claim is a new and distinct claim that the survivor is entitled to DIC in his or her own right based on a showing that the veteran was ''entitled to receive'' certain benefits during the veteran's lifetime. Thus the fact that CUE and new and material evidence both provide grounds on which the veteran could have ''reopened'' or otherwise revisited a previously denied claim during his or her lifetime does not, in itself, provide any basis for applying those remedies to a survivor's DIC claim. Rather, the conclusion that a showing of CUE could establish a survivor's entitlement to DIC is based on factors unique to CUE. First, because CUE may be corrected retroactively, a showing of CUE may bear directly upon the issue of whether a veteran was truly ''entitled to receive'' benefits that were wrongly denied due to VA error during his or her lifetime. Second, the legislative history of 38 U.S.C. 1318 clearly expressed Congress' intent that ''the existence of clear and unmistakable VA administrative error would be a basis for entitlement to DIC benefits when such administrative error is the only bar to entitlement otherwise.'' S. Rep. No. 97–550, at 17 (1982), reprinted in 1982 U.S.C.C.A.N. 2877, 2880. Neither of those considerations applies to the submission of new and material evidence.

Analysis of Public Comments

We received comments from the Paralyzed Veterans of America (PVA) and the National Organization of Veterans' Advocates, Inc. (NOVA), both of which were parties to the above-referenced *NOVA* litigation. NOVA suggested a change to the terminology used in proposed 38 CFR 3.10(c)–(f) to describe the benefits authorized by 38 U.S.C. 1311(a)(2). The remaining comments from PVA and NOVA all relate to the issue of whether DIC claimants may rely on new and material evidence other than newly identified service department records to show that the veteran was ''entitled to receive'' total disability compensation for the specified statutory period. We address these comments below.

I. Terminology in § 3.10(c)–(f)

We proposed to state in 38 CFR 3.10(a) that the rate of DIC payable to a surviving spouse would consist of a basic monthly rate and any applicable increases specified in § 3.10(c) and (e). We proposed, in § 3.10(c), (d), (e), and (f), to describe the additional DIC amount payable under 38 U.S.C. 1311(a)(2) as the ''veteran's compensation increase'' because the survivor's eligibility for that increase was conditioned upon the veteran's entitlement to compensation during his or her lifetime. NOVA states that the term ''veteran's compensation increase'' is misleading because the increase is payable to the surviving spouse rather than the veteran and suggests that we change the term to ''surviving spouse's compensation increase.'' We note that the provisions of proposed § 3.10(a) and (c) make clear that the increase pertains solely to the rate of DIC payable to a surviving spouse and does not authorize any payment to a deceased veteran. Nevertheless, we are changing the proposed term ''veteran's compensation increase'' to the more specific term ''section 1311(a)(2) increase.'' We do not believe that the term suggested by NOVA (''surviving spouse's compensation increase'') is sufficiently specific, because § 3.10(e) refers to other increases that are also payable to surviving spouses as dependency and indemnity compensation.

II. New and Material Evidence

NOVA and PVA both assert that survivors seeking DIC under sections 1311(a)(2) and 1318(b) should be allowed to submit new and material evidence after a veteran's death for the purpose of establishing that the veteran was, at the time of death, ''entitled to receive'' disability compensation for a disability that was rated totally disabling for the specified statutory period immediately preceding the veteran's death. NOVA and PVA both argue that the proposed rules are arbitrary insofar as they allow claimants to rely upon newly identified service department records but not on other types of new evidence submitted after a veteran's death. The organizations present a number of specific arguments in support of this assertion, which we address below.

A. Interpretation of ''Entitled To Receive''

Although not expressly stated in the comments, it appears that each of the comments from PVA and NOVA rest upon a disagreement with VA concerning the meaning of the phrase ''entitled to receive'' as it is used in 38 U.S.C. 1311(a)(2) and 1318(b). Because we believe the interpretation of that statutory phrase is relevant to all of the comments, we address that issue as a preliminary matter, even though it is not expressly discussed in the comments.

The statutory requirement that the veteran have been ''entitled to receive'' certain benefits at the time of death is ambiguous, and two possible interpretations of that language have been suggested. It may be construed to mean that the veteran had a legal right to the specified benefits and that VA had authority to grant such benefits to the veteran under the statutes and regulations giving VA authority to award benefits for the period required by sections 1311(a)(2) and 1318(b). This has been VA's consistent interpretation of the statute. However, in a series of decisions finding ambiguity in prior VA regulations implementing section 1318(b), the CAVC suggested that the phrase ''entitled to receive'' may also be construed to mean that the veteran was ''hypothetically'' entitled to have received total disability compensation for the period required by sections 1311(a)(2) and 1318(b), irrespective of whether the claimant had satisfied the statutory requirements necessary to actually obtain such benefits, such as the requirements pertaining to the filing of applications and those specifying the effective dates of awards based on such applications. *See Wingo* v. *West,* 11 Vet. App. 307, 311 (1998). Under this interpretation, a survivor would be required to submit evidence showing that the veteran was totally disabled due to a service-connected disease for the period specified in section 1311(a)(2) or section 1318(b), but would not need to establish that the veteran had any legal right to compensation for the disability for that period or that VA had any legal authority to pay such benefits to the claimant under the statutes governing VA's authority to pay benefits. The two commenters have advocated the latter interpretation in the *NOVA* litigation and their comments on this rule appear to be predicated upon that interpretation.

The distinction between the two interpretations is significant because, with the exception of newly identified service department records, new and material evidence submitted after a veteran's death could not establish that the veteran had a legal right to receive total disability compensation for a retroactive period preceding the veteran's death or that VA had authority to pay such benefits to the veteran for that retroactive period. This is a function of the finality of VA decisions, the limited nature of reopenings based on new and material evidence, and the corresponding limitations on VA's authority to grant benefits in such reopened claims. As a general matter, once VA denies a claim, the decision is final and VA cannot thereafter consider the claim or award benefits except as otherwise provided by law. *See* 38 U.S.C. 7104(b), 7105(c). Congress has established two exceptions to this finality. One exception permits VA to correct CUE in a prior final decision and to award benefits retroactive to the date of the prior claim. *See* 38 U.S.C. 5109A, 7111. The other exception permits VA to reopen a previously denied claim when new and material evidence is received. *See* 38 U.S.C. 5108. However, Congress has provided that an award based on a reopened claim may be effective no earlier than the date VA received the claim for reopening. *See* 38 U.S.C. 5110(a). Accordingly, except with respect to newly identified service department records, new and material evidence submitted after a veteran's death could not show that a veteran had any legal right to benefits for periods prior to death. The commenters' assertion that DIC claimants may rely upon new and material evidence to establish that a veteran was ''entitled to receive'' benefits for past periods necessarily reflects the view that the phrase ''entitled to receive'' means hypothetical entitlement rather than entitlement under applicable statutory and regulatory provisions.

As stated in the notice of proposed rulemaking, as well as in several prior rulemaking documents published in the **Federal Register** (67 FR 16309 (2002); 66 FR 65861 (2001); 65 FR 3388 (2000)), the phrase ''entitled to receive'' is most reasonably construed to mean that the veteran had a legal right to total disability compensation for the specified period under the statutes governing entitlement to such benefits and that VA had authority to grant such benefits to the veteran under the statutes giving VA authority to award such benefits. There are several reasons why this interpretation best effectuates congressional intent.

First, VA's interpretation comports logically with the language of sections 1311(a)(2) and 1318(b) viewed in their entirety. Although the statutory language alone evinces no clear meaning, it may provide evidence of congressional intent for consideration in connection with other interpretive tools. Section 1311(a)(2) requires that the veteran, ''at the time of death,'' have been ''entitled to receive'' compensation for a service-connected disability ''that was rated totally disabling for a continuous period of at least eight years immediately preceding death.'' Section 1318(b) similarly requires that the veteran, ''at the time of death,'' have been ''entitled to receive'' compensation for a service-connected disability that ''was continuously rated totally disabling'' for a specified period immediately preceding death. The requirement that the disability have been ''rated totally disabling'' for a specified period is consistent with an intent to require that the veteran have held a total disability rating assigned by VA under the statutes and regulations governing disability ratings for the specified period. By statute, a veteran is entitled to receive total disability compensation only during periods in which the disability is rated totally disabling by VA. *See* 38 U.S.C. 1114(j). If Congress intended to authorize benefits without regard to whether the veteran had obtained, or taken the steps necessary to obtain, a total disability rating from VA, it would have been more logical to require only that the veteran ''was totally disabled'' for the specified period, rather than requiring that the veteran was ''rated totally disabled'' for such period.

Second, VA's interpretation comports with the purposes indicated by the legislative history of sections 1311(a)(2) and 1318(b). In providing for payment of DIC based on the veteran's entitlement to total disability

compensation during his or her lifetime, Congress explained that its purpose was to replace the source of income the veteran's family would otherwise lose when the veteran died and his or her compensation payments ceased. The Senate Committee on Veterans' Affairs explained this purpose by stating:

> The appropriate Federal obligation to these survivors should, in the Committee's view, be the replacement of the support lost when the veteran dies. For example, assume that a veteran who is totally blind from service-connected causes dies at the age of 55 from a heart attack, having been so disabled from the age of 22—a period of 33 years. During that period, his wife and he depended upon his disability compensation for income support, but, because his death is not service connected, she would not receive DIC.

S. Rep. No. 95–1054 at 28 (1978), *reprinted in,* 1978 U.S.C.C.A.N. 3465, 3486. Permitting survivors to rely on new and material evidence or on CUE to establish a veteran's entitlement to benefits that were not actually awarded during the veteran's lifetime would be contrary to the stated purpose to replace income that veterans and their families had come to depend on by virtue of having received total disability payments for a prolonged period prior to death. While Congress subsequently explicitly amended the 1978 legislation in 1982 to allow for recovery of DIC benefits in cases of CUE, as indicated below, significantly, it made no similar express provision for recovery in cases where new and material evidence is presented to establish a veteran's entitlement to benefits that were not actually awarded during the veteran's lifetime and could not have been awarded to the veteran retroactively if he or she had survived.

In 1982, Congress expanded the criteria for DIC eligibility under what is now 38 U.S.C. 1318, by authorizing DIC in cases where the veteran would have received total disability compensation for the specified period prior to death but for CUE committed by VA in a decision on a claim submitted during the veteran's lifetime. The stated purpose of that change was ''to provide that the existence of a clear and unmistakable error should not defeat entitlement to the survivors' benefits.'' S. Rep. No. 97–550, at 35 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2877, 2898. The legislative history further explained that, ''[u]nder the amendment, a veteran would not need actually to have been 'in receipt' of total disability benefits for the requisite period of time in order to provide eligibility to the survivors if a clear and unmistakable error had been made that resulted in a shorter period of receipt than should have been provided.'' *Id.*

Permitting survivors to rely on new and material evidence to establish a veteran's entitlement to benefits that were not actually awarded during the veteran's lifetime would go well beyond the stated purpose to provide DIC in cases where CUE resulted in a shorter period of entitlement than should have been provided. As noted above, new and material evidence generally does not have retroactive effect and could not establish a longer period of compensation entitlement for any veteran, as correction of CUE may do. The legislative history of the 1982 statute reasonably reflects the principle that veterans and their families should not be penalized in cases where the veteran did everything necessary to establish entitlement to a total disability rating for the required period, but VA's error prevented the timely assignment of such rating. The purpose of that amendment was clearly remedial, in the same way that the general authority to correct CUE retroactively is remedial. In contrast, the authority to reopen and grant claims upon receipt of new and material evidence (other than service department records that were previously in the government's possession) is not remedial, in that it does not correct any past error, but merely permits a new adjudication informed by new evidence.

In view of the stated congressional purpose, we believe it is appropriate to recognize the distinction between statutory procedures that may result in the retroactive assignment of a total disability rating for periods prior to death (i.e., correction of CUE; readjudication based on newly identified service department records) and those that may not (i.e., reopening based on new and material evidence other than service department records). It is, further, appropriate to recognize a distinction between procedures designed to remedy governmental error (i.e., correction of CUE; readjudication based on newly identified service department records) and those that are not (i.e., reopening based on new and material evidence). Newly identified service department records are considered ''lost or mislaid,'' 38 CFR 3.400(q)(2), presumably by the government, and therefore belong conceptually with CUE, rather than with new and material evidence. In view of Congress's stated purpose to allow DIC where VA's error was the only obstacle to the veteran's receipt of benefits, we find no basis for extending DIC to circumstances where there was no VA error and, moreover, where VA would have no statutory authority to award retroactive entitlement to the veteran if the veteran were still alive.

A third basis for our interpretation of the statutory language is our conclusion that, when Congress conditioned a survivor's DIC eligibility on the extent and duration of a veteran's entitlement to benefits, it intended that VA would apply the existing statutory provisions governing the extent and duration of the veteran's entitlement, including those prohibiting VA from according retroactive effect to decisions based on new and material evidence. As a general rule, new statutes enacted as part of an established statutory scheme must be construed to fit logically within the statutory scheme. *See United States* v. *Jefferson Electric Mfg. Co.,* 291 U.S. 386, 396 (1934) (''As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown.'') When Congress enacted statutes authorizing DIC in cases where a veteran was ''entitled to receive'' a specific type of benefit at a specific level for a specific time period, it is reasonable to assume that Congress intended VA to apply the established statutory and regulatory scheme then in place governing entitlement to benefits, including those statutes and regulations that delimit the duration and level of entitlement. As discussed above and in the notice of proposed rulemaking, those provisions permit retroactive determinations of entitlement only in limited circumstances, involving CUE or newly identified service department records.

Finally, we note that an alternate interpretation—i.e., requiring VA to ignore the statutory and regulatory provisions governing a veteran's entitlement to benefits and the level and duration of such entitlement—would result in a process fraught with uncertainty. Under the effective date provisions of 38 U.S.C. 5110 and corresponding VA regulations, the duration of any veteran's entitlement to benefits may be determined with relative ease and certainty, most often by reference to the date of the claim that resulted in the award of benefits. Although the effective date of entitlement may not correspond to the date the veteran actually became disabled or attained a particular level of disability, the statutory procedure promotes certainty and administrative efficiency. However, if determinations regarding a veteran's entitlement to

benefits are to be made without regard to the statutes expressly governing the effective dates of entitlement, there would be no clear basis for determining when a veteran's entitlement to a total disability rating began. Even assuming that the veteran's ''hypothetical'' entitlement would begin on the date he or she became totally disabled due to a service-connected disability, such a determination ordinarily would be exceedingly difficult, highly speculative, and would lend itself to prolonged evidentiary disputes, potentially involving medical opinions or lay testimony rendered many years after the events in question. The difficulty of such determinations would be compounded by the need to evaluate the decedent's condition over a prolonged continuous period of many years prior to death. In view of Congress' practice of imposing clear and definite effective-date rules for VA benefit awards and limiting retroactive awards and the complex issues they involve, we believe it is reasonable to conclude that Congress did not intend to impose a much more complex and uncertain process for determining a veteran's entitlement to benefits for purposes of sections 1311(a)(2) and 1318. This conclusion is underscored by the stated purposes of those statutes to authorize benefits in cases where the veteran's entitlement can be simply and readily established—i.e., where the veteran was actually receiving total disability compensation at the time of death or would have received such benefits but for a VA error that is clearly and unmistakably shown by the record created during the veteran's lifetime.

NOVA presents three comments regarding the foregoing analysis. First, it asserts that the congressional purpose to replace income lost when a totally-disabled veteran dies would apply equally in circumstances in which the veteran held a total-disability rating for less than the specified statutory period. We do not dispute nor diminish the hardship that any family may face following the death of a veteran family member and the resulting termination of VA benefit payments. However, Congress has specified by statute the period of a veteran's entitlement to total disability compensation that is necessary to vest survivors with DIC entitlement under section 1311(a)(2) and 1318(b). The difficult task of drawing lines governing benefit entitlement is a policy matter entrusted to Congress and VA is not at liberty to alter the statutory standards Congress has adopted. *See Mathews* v. *Diaz,* 426 U.S. 67, 83–84 (1976). Accordingly, we make no change based on this comment.

Second, NOVA asserts that allowing survivors to rely upon any type of new and material evidence submitted after a veteran's death would serve a ''remedial purpose'' similar to the correction of CUE and would be consistent with the congressional intent to authorize DIC where VA error prevented the veteran from receiving benefits during his or her lifetime. We do not agree. The statutory and regulatory provisions relating to CUE and newly obtained service department records are unique not merely because they can fairly be described as having a ''remedial'' purpose, but also because they effectuate that purpose by expressly authorizing retroactive awards of entitlement to benefits. There is no similar authority for retroactive awards based on new and material evidence, and the mere assertion that the reopening of claims serves a remedial function cannot provide such authority in view of the effective-date rules in 38 U.S.C. 5110(a). Moreover, it is not accurate to say that a reopening based on new and material evidence provides a remedy for VA error. As the Federal Circuit stated in *Sears* v. *Principi,* VA's effective-date regulations reasonably differentiate between reopening based on previously unobtained service department records, which provides a remedy for ''government errors or inattention,'' and reopening based on other evidence, which encompasses ''situations outside the control of the government,'' such as where the new evidence was not provided earlier ''either due to inattention by the veteran or his representatives or subsequent advances in medicine and science.'' *Sears,* 349 F.3d at 1331. Accordingly, we make no change based on this comment.

Third, NOVA asserts that interpreting sections 1311 and 1318 to permit reopening based on new and material evidence would have no significant practical effects on VA claim processing. NOVA asserts that DIC claimants alone would be responsible for developing evidence relevant to their claim and that VA would have no need to conduct any evidentiary development unless it were for the improper purpose of trying to refute the survivor's DIC claim. VA does not agree with this comment. If new and material evidence submitted after a veteran's death could potentially establish a survivor's entitlement to DIC under section 1311(a)(2) and 1318(b), VA would be required by statute and regulation, to assist the claimant in obtaining evidence necessary to substantiate the claim. 38 U.S.C. 5103A; 38 CFR 3.159(c). Such assistance would be necessary if the claimant needed help obtaining allegedly new and material evidence or if evidence submitted by the claimant was insufficient to permit fair adjudication of the claim. The assertion that VA's assistance could serve no purpose other than to refute the claim is factually incorrect and is contrary to law and to longstanding VA policy.

Further, the practical concerns we discussed were not based merely on the fact that VA would need to assist claimants in developing evidence, as VA routinely does. Rather, the burdens unique to NOVA's suggested interpretation of sections 1311(a)(2) and 1318(b) would involve the difficulty of resolving medical issues regarding the duration and degree of a veteran's disability many years after the events in question and the difficulty of ascertaining a specific period of the veteran's ''entitlement'' to total disability benefits in the absence of an applicable statutory standard defining the period of entitlement. As noted above, 38 U.S.C. 5110(a) provides a definite and specific mechanism for measuring the beginning date of any individual's entitlement to benefits. If, as NOVA suggests, that provision is inapplicable in determining the period of a veteran's entitlement to total disability benefits for purposes of section 1311(a)(2) and 1318(b), there would be no clear basis for defining the period of a veteran's entitlement. Assuming the matter involved a purely factual determination as to when the veteran's total disability began, resolution of that question would often be a matter of significant uncertainty and speculation, compounded by the remoteness of the events and the unavailability of the veteran. There potentially would be equal difficulty in determining whether the veteran was totally disabled throughout the specified statutory period, as sections 1311(a)(2) and 1318(b) require, in the absence of clear and contemporaneous disability evaluations throughout that period. *See* 38 CFR 4.1, 4.2 (discussing the need for thorough medical reports to support disability evaluations).

We do not suggest that these problems are entirely insurmountable. Rather, as stated in the notice of proposed rulemaking, the extent of the burdens and uncertainty that would be associated with this interpretation of sections 1311(a)(2) and 1318(b) lends support to our conclusion that Congress did not intend that interpretation. The legislative history reflects that Congress intended to authorize these DIC benefits in at least two circumstances in which

the extent and duration of the veteran's entitlement to benefits can be readily established by the record of proceedings during the veteran's lifetime, *i.e.*, where the veteran actually received total disability benefits for the specified period or would have received such benefits but for a VA error that is clear and unmistakable on the existing record. Viewed against these definite and efficient standards, it is unlikely that Congress intended to impose the much more complex, uncertain, and hypothetical adjudicative actions that would be necessary in determinations based on new and material evidence. For the foregoing reasons, we make no change based upon this comment.

B. Comments Based on 38 U.S.C. 5110(a)

As explained above, VA concluded that the submission of new and material evidence following a veteran's death could generally not retroactively establish that the veteran was ''entitled to receive'' compensation for periods prior to the veteran's death, because 38 U.S.C. 5110(a) prohibits retroactive awards based on new and material evidence. NOVA asserts that this statutory limit on retroactivity is irrelevant because section 1311(a)(2) or 1318(b) would not require VA to pay any retroactive benefits to a veteran. Rather, NOVA asserts, VA would be required only to pay prospective DIC benefits to survivors in a manner consistent with section 5110(a).

VA does not agree with this comment. NOVA is correct that VA would not be required to pay retroactive benefits to a deceased veteran or to the DIC claimant. However, a survivor's claim for benefits under section 1311(a)(2) or section 1318(b) is predicated on the veteran's entitlement to benefits insofar as the statutes authorize benefits only if the veteran was ''entitled to receive'' total disability compensation for a specified period prior to death. In order to determine whether a veteran was ''entitled to receive'' benefits for past periods, VA necessarily must consider section 5110(a), which imposes limits on a veteran's entitlement to receive, and VA's authority to award, benefits for specific periods. If a veteran whose claim was denied ten years ago were to submit new evidence establishing that he was totally disabled due to service-connected disability, section 5110(a) would permit VA to award compensation only from the date the claim was reopened, even if the total disability may have arisen at an earlier date. The veteran's reopened claim could not establish a right to receive benefits for any prior periods. New and material evidence submitted after a veteran's death could no more establish the veteran's retroactive entitlement to benefits than could evidence submitted by the veteran himself during his lifetime. Although an adjudication under section 1311(a)(2) or section 1318(b) based on new and material evidence would not require VA to actually release payment to a deceased veteran, such a claim could prevail only if VA were to find that the veteran was entitled to receive payment from VA for periods prior to the date VA received the new and material evidence establishing such entitlement. Such a finding would be contrary to the requirements of section 5110(a). Accordingly, we make no change based on this comment.

NOVA also states that, although section 5110(a) limits the effective date of awards based on claims reopened after a final adjudication, the statute refers separately to the effective date of claims for DIC and provides that the effective date of such awards ''shall be fixed in accordance with the facts found.'' NOVA asserts that it is improper for VA to rely on the statute's reference to reopened claims because effective-date issues in claims under section 1311(a)(2) and 1318(b) are governed by section 5110(a)'s reference to DIC claims.

VA does not agree with this comment. Section 5110(a) states a single effective-date rule applicable to ''an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, [or] dependency and indemnity compensation'' and provides that the effective date of any such award ''shall be in accordance with the facts found but shall not be earlier than the date of receipt of application therefor.'' In the context of a claim for DIC benefits under section 1311(a)(2) or 1318(b), there are potentially two effective-date issues to which section 5110(a) may apply. First, as explained above, section 5110(a) would govern the effective date of any compensation award to the veteran and thus would determine the date, if any, on which a veteran became ''entitled to receive'' total disability compensation. The duration of the veteran's total disability compensation, if any, would determine whether the survivor was entitled to DIC under section 1311(a)(2) or 1318(b). Second, if the survivor is entitled to DIC, section 5110(a) would again operate to determine the effective date of the survivor's entitlement. The issue of the effective date of a survivor's DIC award, if one is made, is both logically and sequentially distinct from the issue of the effective date of any benefits the veteran was entitled to receive during his or her lifetime. Accordingly, the fact that section 5110(a) would govern the effective date of a survivor's DIC award does not conflict with our conclusion that section 5110(a) also applies in determining whether and to what extent the veteran was ''entitled to receive'' benefits from VA. We therefore make no change based on this comment.

C. Comments Based on 38 U.S.C. 5108

PVA asserts that the proposed rules are inconsistent with 38 U.S.C. 5108 insofar as they provide that newly identified service department records may provide a basis for establishing that a veteran was ''entitled to receive'' benefits for past periods but that other types of new evidence submitted after a veteran's death may not establish that fact. Section 5108 provides that, ''[i]f new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary shall reopen the claim and review the former disposition of the claim.'' PVA asserts that this statute unambiguously requires VA to reopen a previously denied claim when new and material evidence is received. PVA further asserts that, because this statute does not limit the form of acceptable new and material evidence, there is no basis for VA's conclusion that newly identified service department records, but not other types of records, submitted after a veteran's death, may establish that a veteran was ''entitled to receive'' benefits for periods prior to death. NOVA similarly asserts that there is no rational basis for distinguishing between newly identified service department records and other types of new evidence.

VA does not agree with these comments. Section 5108 allows claimants to reopen their benefit claims after a final denial. It is well established, however, that a veteran's claim for disability compensation does not survive the veteran's death. *See Richard* v. *West*, 161 F.3d 719, 721–22 (Fed. Cir. 1998). Section 5108 thus provides no general authority for survivors to ''reopen'' a deceased veteran's claim with new and material evidence. A survivor's claim for DIC under section 1311(a)(2) or section 1318(b) is not a ''reopening'' of the deceased veteran's compensation claim within the meaning of 38 U.S.C. 5108, but instead is a distinct claim for DIC benefits by the survivor.

Insofar as the proposed rule allows survivors to submit newly identified service department records after a veteran's death, the rule is not based upon 38 U.S.C. 5108, but upon the provisions of 38 U.S.C. 1311(a)(2) and

1318(b), viewed in the context of the overall statutory scheme in title 38, United States Code. Although a veteran's claim does not survive his or her death, sections 1311(a)(2) and 1318(b) are most reasonably construed to permit examination of decisions on a veteran's claim to the extent necessary to determine the survivor's entitlement to DIC. Because a survivor's entitlement to DIC under section 1311(a)(2) and 1318(b) may depend upon whether the veteran was ''entitled to receive'' total disability benefits for a specified number of years prior to death, it is reasonable to conclude that Congress intended to permit VA to examine prior claims or decisions under limited circumstances to determine whether the veteran was ''entitled to receive'' total disability benefits for the specified statutory period. This congressional intent is made clear by the legislative history stating an intent to allow DIC under sections 1311(a)(2) and 1318(b) if it is shown that the veteran would have received the specified compensation benefits but for CUE in a decision on a claim during the veteran's lifetime. As explained above, a veteran's retroactive entitlement to benefits may be established by a showing that prior decisions contained CUE or by newly identified service department records that establish entitlement to benefits. However, new and material evidence, if submitted after a veteran's death, could not establish such retroactive entitlement. Accordingly, the distinction in the proposed rule between newly identified service department records and new evidence submitted after death merely reflects the distinction between circumstances that may satisfy the eligibility requirements of section 1311(a)(2) and 1318(b) and circumstances that could not as a matter of law satisfy those eligibility requirements.

PVA and NOVA are correct that 38 U.S.C. 5108 does not distinguish between newly obtained service department records and other types of new evidence. However, the other statutory and regulatory provisions upon which the proposed rule was based do reflect a material distinction between the retroactive effect of awards based on newly obtained service department records and awards based on other types of new evidence. As explained above, 38 U.S.C. 5110(a) makes clear that entitlement to benefits based on a claim reopened with new and material evidence generally may be effective no earlier than the date VA received the reopened claim, and thus cannot establish retroactive entitlement for periods prior to the reopening. *See also* 38 CFR 3.400(q)(1). VA regulations recognize an exception to this general rule in cases where a previously denied claim is reopened with newly obtained service department records. In such cases, VA's regulations state that the effective date of entitlement to benefits will ''agree with evaluation (since it is considered that these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later.'' 38 CFR 3.400(q)(2); *see also* 38 CFR 3.156(c).

The Federal Circuit has acknowledged and upheld the distinction between the retroactivity of awards based on newly obtained service department records and awards based on other types of new evidence. In *Sears*, the court stated:

> [A] claim that is reopened for new and material evidence in the form of missing service medical records dates back to the filing of the veteran's original claim for benefits. 38 CFR 3.400(q)(2) (2003).
>
> Section 3.400(q)(1)(ii) applies to other instances of new and material evidence, situations in which the new evidence was not presented earlier, either due to inattention by the veteran or his representative or subsequent advances in medicine and science. We conclude that section 3.400, which differentiates between government errors or inattention, and situations outside the control of the government, is not unreasonable.

349 F.3d at 1331. As the Court noted, the rules permitting retroactive awards based on newly identified service department records reflect the judgment that the failure to establish benefit entitlement at an earlier date would, in such cases, be a result of ''government errors or inattention.'' In this respect, the rules governing awards based on such service department records serve a remedial function similar to the rules governing the correction of CUE in prior decisions. In contrast, as the Federal Circuit noted, awards based on other types of new evidence do not remedy past government error, but merely permit consideration of new evidence that was not previously submitted for reasons outside the government's control. This distinction is also supported by the CAVC's decision in *Spencer*, 4 Vet. App. at 293, which stated that, generally, ''even upon a reopening, the prior claim is still 'final' in a sense,'' because ''[a]ny award of benefits made upon a claim reopened under section 5108 on other than service department reports will have an effective date no earlier than the date of the filing of the claim to reopen.'' The CAVC noted that VA's regulations according retroactive effect to awards based on service department records were rooted in VA regulations dating back to the 1930s and were consistent with prior statutory provisions.

For the reasons stated above, the distinction in the proposed rules between awards based on newly identified service department records and awards based on other types of new evidence is reasonable and is not inconsistent with 38 U.S.C. 5108. Accordingly, we make no change based upon the referenced comments.

D. Other Comments

NOVA asserts that VA should not distinguish between claims involving newly obtained service department records and claims involving other new evidence submitted after a veteran's death, because the function of either type of evidence would be the same, i.e., to provide a factual basis for determining that the veteran met the criteria for a total disability rating for the specified period prior to death. This comment is based on the assumption that a survivor is entitled to DIC under section 1311(a)(2) and 1318(b) whenever current evidence shows that the veteran was totally disabled due to service-connected disability for the specified period, irrespective of whether the veteran was entitled to receive any payments from VA for that period under the statutes and regulations governing awards of VA benefits. That assumption is incorrect, for the reasons set forth above. Because new evidence other than newly identified service department records cannot retroactively establish that a veteran was ''entitled to receive'' benefits for past periods, we make no change based on this comment.

NOVA also asserts that the regulation is arbitrary insofar as it permits new evidence only in the form of newly identified service department records because, in NOVA's view, service department records could not provide any information supporting the claim. VA does not agree. Service department records may be highly relevant in some circumstances, such as where the fact of the veteran's total disability was established, but VA had previously denied service connection for the disability due to the absence of evidence that the disability arose in service. Moreover, the reference in the proposed rules to service department records is not arbitrary, but properly reflects the existing statutory and regulatory scheme, which makes clear that service department records are the only form of new evidence that potentially may establish that a veteran was ''entitled to receive'' total disability compensation for past periods.

III. Section 20.1106

We proposed to revise 38 CFR 20.1106 in two respects. First, we proposed to add a reference in that rule to 38 U.S.C. 1311(a)(2), to clarify that claims under that statute are exempt from the general rule that issues in a survivor's claim for death benefits will be decided without regard to any disposition of the same issues during the veteran's lifetime. Second, we proposed to revise the regulation to state that VA would disregard only ''unfavorable'' dispositions during the veteran's lifetime. We explained that the second change would reflect VA's traditional practice of disregarding only unfavorable decisions and would resolve an ambiguity existing by virtue of differing language in the caption of § 20.1106, which refers to ''unfavorable'' decisions during a veteran's lifetime, and the text of § 20.1106, which more broadly states that VA will decide a survivor's claims without regard to ''any prior disposition.''

We received no comments on the proposed revisions to § 20.1106. Upon further consideration, however, we have concluded that the second change discussed above would be misleading and potentially inconsistent with statutory requirements in some instances. In a precedential opinion designated as VAOPGCPREC 11–96, VA's General Counsel noted that VA's traditional practice under § 20.1106 had been to disregard only unfavorable dispositions on a veteran's claim and, correspondingly, to accept favorable findings of service connection made during a veteran's lifetime. The General Counsel concluded that this practice was inconsistent with the requirements of a statute limiting VA's authority to grant service connection for a veteran's death for purposes of a survivor's DIC claim, even if VA had correctly granted service connection to the veteran during his or her lifetime for the condition that eventually caused the veteran's death. The General Counsel noted that Congress had enacted a statute that prospectively prohibited VA from granting service connection for disability or death due to an injury or disease caused by the veteran's abuse of alcohol or drugs. 38 U.S.C. 105. The General Counsel concluded that, even if VA had properly granted service connection to a veteran prior to the enactment of this statute, the statute precluded VA from granting service connection for the veteran's death if the death was caused by an injury or disease resulting from the veteran's abuse of alcohol or drugs. The General Counsel concluded that VA's traditional practice under § 20.1106 must yield in the face of statutory provisions requiring a different result.

A similar concern exists with respect to 38 U.S.C. 1103(a), which prohibits VA from establishing service connection for disability or death on the basis that it resulted from injury or disease attributable to the veteran's use of tobacco products during the veteran's service. In *Kane* v. *Principi*, 17 Vet. App. 97 (2003), the CAVC held that section 1103(a) prohibits VA from establishing service connection for a veteran's death due to an injury or disease related to the veteran's tobacco use even if VA had properly granted service connection for that injury or disease during the veteran's lifetime based on then-existing law.

Although there may be relatively few instances in which the Board would be required by statute to disregard a favorable decision during a veteran's lifetime, the proposed unqualified reference to disregarding only ''unfavorable'' decisions would be misleading and inaccurate with respect to such cases. Accordingly, we are not adopting that proposed change to § 20.1106. We recognize that § 20.1106 currently is ambiguous as to whether it requires the Board to disregard only unfavorable decisions. However, the revision we proposed would not be legally accurate or sufficiently informative with respect to all potential applications of that rule. A clarification of the applicable law and VA policy with respect to this matter would require consideration of matters beyond the scope of the proposed rule and, therefore, would more properly be the subject of a separate rule making.

We are, however, adopting as final the proposal to revise § 20.1106 to specify that claims under 38 U.S.C. 1311(a)(2) are among the types of claims exempt from the general rule that issues in a decision on a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime. That proposed change is consistent with our determination that claims under sections 1311(a)(2) and 1318(b) should be addressed in the same manner. As noted above, we received no comments on that proposed change, which we now adopt as final.

For the reasons stated above and in the notice of proposed rulemaking, VA will adopt the proposed rules as final, with the changes discussed above.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment 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. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles are 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: August 1, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 3 and 20 are amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.5 [Amended]

■ 2. Section 3.5 is amended by removing paragraph (e).

■ 3. Section 3.10 is added to read as follows:

§ 3.10 Dependency and indemnity compensation rate for a surviving spouse.

(a) *General determination of rate.* When VA grants a surviving spouse entitlement to DIC, VA will determine the rate of the benefit it will award. The rate of the benefit will be the total of the basic monthly rate specified in paragraph (b) or (d) of this section and any applicable increases specified in paragraph (c) or (e) of this section.

(b) *Basic monthly rate.* Except as provided in paragraph (d) of this section, the basic monthly rate of DIC for a surviving spouse will be the amount set forth in 38 U.S.C. 1311(a)(1).

(c) *Section 1311(a)(2) increase.* The basic monthly rate under paragraph (b) of this section shall be increased by the amount specified in 38 U.S.C. 1311(a)(2) if the veteran, at the time of death, was receiving, or was entitled to receive, compensation for service-connected disability that was rated by VA as totally disabling for a continuous period of at least eight years immediately preceding death. Determinations of entitlement to this increase shall be made in accordance with paragraph (f) of this section.

(d) *Alternative basic monthly rate for death occurring prior to January 1, 1993.* The basic monthly rate of DIC for a surviving spouse when the death of the veteran occurred prior to January 1, 1993, will be the amount specified in 38 U.S.C. 1311(a)(3) corresponding to the veteran's pay grade in service, but only if such rate is greater than the total of the basic monthly rate and the section 1311(a)(2) increase (if applicable) the surviving spouse is entitled to receive under paragraphs (b) and (c) of this section. The Secretary of the concerned service department will certify the veteran's pay grade and the certification will be binding on VA. DIC paid pursuant to this paragraph may not be increased by the section 1311(a)(2) increase under paragraph (c) of this section.

(e) *Additional increases.* One or more of the following increases may be paid in addition to the basic monthly rate and the section 1311(a)(2) increase.

(1) *Increase for children.* If the surviving spouse has one or more children under the age of 18 of the deceased veteran (including a child not in the surviving spouse's actual or constructive custody, or a child who is in active military service), the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(b) for each child.

(2) *Increase for regular aid and attendance.* If the surviving spouse is determined to be in need of regular aid and attendance under the criteria in § 3.352 or is a patient in a nursing home, the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(c).

(3) *Increase for housebound status.* If the surviving spouse does not qualify for the regular aid and attendance allowance but is housebound under the criteria in § 3.351(f), the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(d).

(f) *Criteria governing section 1311(a)(2) increase.* In determining whether a surviving spouse qualifies for the section 1311(a)(2) increase under paragraph (c) of this section, the following standards shall apply.

(1) *Marriage requirement.* The surviving spouse must have been married to the veteran for the entire eight-year period referenced in paragraph (c) of this section in order to qualify for the section 1311(a)(2) increase.

(2) *Determination of total disability.* As used in paragraph (c) of this section, the phrase ''rated by VA as totally disabling'' includes total disability ratings based on unemployability (§ 4.16 of this chapter).

(3) *Definition of ''entitled to receive''.* As used in paragraph (c) of this section, the phrase ''entitled to receive'' means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(i) The veteran would have received total disability compensation for the period specified in paragraph (c) of this section but for clear and unmistakable error committed by VA in a decision on a claim filed during the veteran's lifetime; or

(ii) Additional evidence submitted to VA before or after the veteran's death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran's lifetime and for awarding a total service-connected disability rating retroactively in accordance with §§ 3.156(c) and 3.400(q)(2) of this part for the period specified in paragraph (c) of this section; or

(iii) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (c) of this section, but was not receiving compensation because:

(A) VA was paying the compensation to the veteran's dependents;

(B) VA was withholding the compensation under the authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(C) The veteran had not waived retired or retirement pay in order to receive compensation;

(D) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2);

(E) VA was withholding payments because the veteran's whereabouts were unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(F) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

(Authority: 38 U.S.C. 501(a), 1311, 1314, and 1321).

■ 4. Section 3.22 is amended by revising paragraph (b) to read as follows:

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

* * * * *

(b) For purposes of this section, ''entitled to receive'' means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(1) The veteran would have received total disability compensation at the time of death for a service-connected disability rated totally disabling for the period specified in paragraph (a)(2) of this section but for clear and unmistakable error committed by VA in a decision on a claim filed during the veteran's lifetime; or

(2) Additional evidence submitted to VA before or after the veteran's death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran's lifetime and for awarding a total service-connected

disability rating retroactively in accordance with §§ 3.156(c) and 3.400(q)(2) of this part for the relevant period specified in paragraph (a)(2) of this section; or

(3) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (a)(2), but was not receiving compensation because:

(i) VA was paying the compensation to the veteran's dependents;

(ii) VA was withholding the compensation under authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(iii) The veteran had not waived retired or retirement pay in order to receive compensation;

(iv) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2);

(v) VA was withholding payments because the veteran's whereabouts were unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(vi) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

* * * * *

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

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

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

Subpart L—Finality

■ 6. Section 20.1106 is revised to read as follows:

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

* * * * *

(Authority: 38 U.S.C. 7104(b)).

[FR Doc. 05–23541 Filed 12–1–05; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail: New Postal Rates and Fees

AGENCY: Postal Service.

ACTION: Notice of implementation of new domestic rates and fees.

SUMMARY: The Governors of the U.S. Postal Service accepted the Postal Rate Commission's recommendation to increase most postal rates and fees by approximately 5.4 percent. The Board of Governors set 12:01 a.m. Sunday, January 8, 2006, as the effective date for the new prices.

EFFECTIVE DATE: 12:01 a.m., Sunday, January 8, 2006.

FOR FURTHER INFORMATION CONTACT: Sherry Suggs, 202–268–7261.

SUPPLEMENTARY INFORMATION: On April 8, 2005, the Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on Changes in Rates of Postage and Fees. The Commission designated the filing as Docket No. R2005–1. On November 1, 2005, the Commission issued its Opinion and Recommended Decision. The Governors approved all of the Commission's recommendations on November 14, 2005. Based on the decision of the Governors and Resolution No. 05–9 of the Board of Governors, the Postal Service adopts the new rates and fees and sets an effective date of 12:01 a.m., January 8, 2006.

This price increase is the first since 2002. It is needed to fulfill a Federal law passed in 2003 that requires the Postal Service to place $3.1 billion in escrow by September 30, 2006.

Customers can find resources and additional information about the price change at *usps.com/ratecase*. A special issue of the *Postal Bulletin* with detailed information, new rate and fee tables, and revised ''EZ'' (simplified) postage statements will be available online December 1, 2005. The Postage Rate Calculators at *pe.usps.com* will reflect new rates and fees beginning January 8, 2006.

The Postal Service adopts the following new rates and fees. Conforming changes will be made throughout *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. *Revise Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), to adopt the following new rates and fees.

Stanley F. Mires,

Chief Counsel, Legislative.

BILLING CODE 7710–12–P

UNITED STATES POSTAL SERVICE.

Rates and Fees

Effective January 8, 2006

RETAIL RATES

Express Mail
Priority Mail
First-Class Mail
Bound Printed Matter
Media Mail
Library Mail
Parcel Post

DISCOUNT RATES

Letters
First-Class Mail
Standard Mail

Flats
First-Class Mail
Bound Printed Matter
Standard Mail
Media Mail
Library Mail

Parcels
First-Class Mail
Bound Printed Matter
Standard Mail
Media Mail
Library Mail
Parcel Post

Periodicals

FEES

Extra Services
Recipient Services
Mailer Services
Other Fees and Charges

Postal Explorer pe.usps.com

Rate Calculators: Use the Rate Calculators on the Postal Explorer website at pe.usps.com to calculate rates.
Domestic Rate Charts: Rates and Fees Reference is available as a PDF and HTML document at pe.usps.com.
Zone Charts: Access National Zone Charts at pe.usps.com.

Retail Mail: Express Mail

Retail Mail

Express Mail

RETAIL LETTERS, FLATS, & PARCELS

Weight Not Over (pounds)	Service [1] Custom Designed	Next Day & Second Day PO to PO	Next Day & Second Day PO to Addressee
1/2 [2]	$11.30	$10.95	$14.40
1	15.70	15.40	18.80
2	15.70	15.40	18.80
3	19.10	18.75	22.20
4	22.40	22.10	25.50
5	25.65	25.35	28.75
6	28.95	28.60	32.05
7	32.15	31.85	35.25
8	33.50	33.20	36.65
9	35.05	34.75	38.15
10	36.40	36.10	39.50
11	38.20	37.90	41.30
12	41.00	40.70	44.10
13	43.00	42.70	46.10
14	44.10	43.80	47.20
15	45.50	45.15	48.60
16	47.10	46.80	50.20
17	48.70	48.40	51.80
18	50.15	49.85	53.30
19	51.70	51.40	54.80
20	53.25	52.90	56.35
21	54.75	54.45	57.85
22	56.30	55.95	59.40
23	57.85	57.55	60.95
24	59.35	59.00	62.45
25	60.80	60.50	63.95
26	62.40	62.10	65.50
27	63.85	63.55	67.00
28	65.45	65.15	68.55
29	67.00	66.65	70.10
30	68.50	68.20	71.60
31	70.05	69.70	73.15
32	71.60	71.30	74.75
33	73.05	72.75	76.15
34	74.70	74.35	77.80
35	76.10	75.80	79.20
36	77.75	77.40	80.85
37	79.45	79.15	82.60
38	81.35	81.05	84.50
39	83.20	82.90	86.30
40	$85.10	$84.80	$88.20
41	87.00	86.70	90.10
42	88.95	88.65	92.05
43	90.75	90.45	93.85
44	92.60	92.30	95.70
45	94.30	93.95	97.40
46	95.70	95.40	98.80
47	97.45	97.15	100.55
48	98.95	98.65	102.10
49	100.45	100.15	103.55
50	102.05	101.70	105.15
51	103.70	103.40	106.80
52	105.20	104.85	108.30
53	106.80	106.50	109.95
54	108.35	108.05	111.45
55	109.95	109.60	113.05
56	111.55	111.25	114.70
57	113.10	112.80	116.20
58	114.75	114.40	117.85
59	116.40	116.10	119.50
60	118.25	117.95	121.35
61	120.25	119.95	123.35
62	122.10	121.80	125.20
63	123.90	123.60	127.00
64	125.95	125.65	129.05
65	127.75	127.45	130.85
66	129.75	129.45	132.85
67	131.55	131.20	134.65
68	133.55	133.25	136.65
69	135.40	135.05	138.50
70	137.30	136.95	140.40

1. Same Day Airport service is currently suspended.
2. The 1/2-pound rate is charged for matter sent in an Express Mail flat-rate envelope provided by the USPS, regardless of the actual weight.

Priority Mail

RETAIL LETTERS, CARDS, FLATS, & PARCELS

Weight Not Over (pounds) [1, 2]	Zone					
	Local, 1, 2, & 3	4	5	6	7	8
1 [3]	$4.05	$4.05	$4.05	$4.05	$4.05	$4.05
2	4.20	4.80	5.15	5.30	5.70	6.05
3	5.00	6.40	7.20	7.55	8.25	9.00
4	5.60	7.45	8.50	8.95	9.95	10.90
5	6.15	8.45	9.80	10.40	11.60	12.80
6	6.65	9.35	10.45	10.60	11.90	12.95
7	7.15	10.35	11.25	11.60	13.25	14.80
8	7.75	11.35	12.05	12.60	14.55	16.60
9	8.35	12.35	12.85	13.60	15.85	18.45
10	8.85	13.30	13.70	14.75	17.20	20.25
11	9.45	14.05	14.50	15.95	18.50	22.05
12	10.00	14.80	15.30	17.20	19.80	23.85
13	10.55	15.55	16.15	18.45	21.15	25.65
14	11.10	16.30	16.90	19.60	22.40	27.45
15	11.65	17.05	17.75	20.80	23.70	29.30
16	12.25	17.80	18.55	22.00	25.05	31.10
17	12.80	18.55	19.35	23.25	26.35	32.90
18	13.35	19.30	20.35	24.40	27.65	34.75
19	13.90	20.05	21.30	25.60	29.00	36.50
20	14.50	20.80	22.30	26.70	30.30	38.35
21	15.00	21.55	23.25	28.00	31.60	40.15
22	15.60	22.30	24.20	29.15	32.90	41.95
23	16.15	23.05	25.20	30.35	34.20	43.80
24	16.70	23.75	26.20	31.50	35.50	45.60
25	17.30	24.55	27.15	32.80	36.85	47.40
26	17.80	25.30	28.05	34.00	38.15	49.20
27	18.40	26.05	29.05	35.15	39.45	51.00
28	18.95	26.75	30.05	36.35	40.80	52.85
29	19.50	27.55	31.05	37.50	42.10	54.65
30	20.10	28.30	32.00	38.80	43.40	56.45
31	20.60	29.05	32.90	39.90	44.70	58.30
32	21.20	29.80	33.90	41.10	46.00	60.10
33	21.75	30.50	34.90	42.25	47.30	61.85
34	22.30	31.30	35.85	43.50	48.65	63.70
35	22.85	32.05	36.85	44.70	49.95	65.50
36	23.45	32.80	37.80	45.90	51.30	67.30
37	24.00	33.70	38.80	47.05	52.60	69.15
38	24.55	34.40	39.75	48.35	53.90	70.95
39	25.05	35.30	40.75	49.55	55.25	72.80
40	25.55	36.15	41.75	50.70	56.50	74.55

Weight Not Over (pounds) [1, 2]	Zone					
	Local, 1, 2, & 3	4	5	6	7	8
41	$26.05	$36.90	$42.65	$51.90	$57.80	$76.35
42	26.55	37.80	43.60	53.00	59.20	78.20
43	27.05	38.60	44.60	54.30	60.50	80.00
44	27.55	39.40	45.60	55.45	61.85	81.80
45	28.05	40.25	46.55	56.65	63.20	83.65
46	28.55	41.10	47.50	57.80	64.50	85.45
47	29.05	41.90	48.50	59.10	65.90	87.20
48	29.55	42.80	49.50	60.30	67.20	89.05
49	30.05	43.60	50.40	61.45	68.55	90.85
50	30.50	44.45	51.40	62.65	69.90	92.70
51	31.05	45.25	52.35	63.80	71.20	94.50
52	31.50	46.10	53.35	65.10	72.50	96.30
53	32.05	46.90	54.30	66.25	73.85	98.15
54	32.50	47.70	55.30	67.40	75.15	99.90
55	33.05	48.60	56.30	68.55	76.40	101.70
56	33.50	49.40	57.20	69.85	77.75	103.55
57	34.05	50.20	58.15	71.00	79.05	105.35
58	34.50	51.05	59.15	72.20	80.35	107.15
59	35.05	51.90	60.15	73.35	81.70	109.00
60	35.50	52.70	61.15	74.60	83.00	110.80
61	36.05	53.60	62.05	75.85	84.30	112.60
62	36.50	54.35	63.05	77.00	85.65	114.40
63	37.05	55.25	64.05	78.20	86.95	116.20
64	37.50	56.05	65.05	79.40	88.20	118.05
65	38.05	56.80	65.90	80.60	89.55	119.85
66	38.50	57.70	66.90	81.75	90.85	121.65
67	39.05	58.60	67.90	82.95	92.15	123.50
68	39.50	59.35	68.90	84.10	93.50	125.25
69	40.05	60.20	69.85	85.35	94.80	127.05
70	40.55	61.10	70.80	86.55	96.10	128.90

1. Parcels that weigh less than 15 pounds but measure more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable rate for a 15-pound parcel (balloon rate).
2. For keys and ID devices that weigh:
   Up to 13 ounces, refer to Retail First-Class Mail (133).
   More than 13 ounces but not more than 1 pound, postage is $4.70.
   More than 1 pound but not more than 2 pounds, postage is $5.45.
3. The 1-pound rate is charged for matter sent in a Priority Mail flat-rate envelope provided by the USPS, regardless of the actual weight of the piece.

Retail Mail: First-Class Mail

First-Class Mail

RETAIL LETTERS, CARDS, FLATS, & PARCELS

Weight Not Over (ounces) [1, 2]	Single-Piece
1 [3]	$0.39
2	0.63
3	0.87
4	1.11
5	1.35
6	1.59
7	1.83
8	2.07
9	2.31
10	2.55
11	2.79
12	3.03
13	3.27
Card Rate [4]	$0.24

1. For each additional ounce, postage includes $0.24 for single-piece rates.
2. For keys and ID devices, add a $0.65 fee. If more than 13 ounces, refer to Retail Priority Mail (see 123).
3. Pieces weighing 1 oz. or less may be subject to a nonmachinable surcharge of $0.13 per piece (see 101.6.4).
4. The card rate applies to each single or double postcard when originally mailed; reply half of double postcard must bear postage at applicable rate when returned unless prepared as business reply mail.

Bound Printed Matter

RETAIL FLATS

Weight Not Over (pounds) [1]	Zone						
	Local, 1 & 2	3	4	5	6	7	8
1.0	$1.89	$1.94	$1.99	$2.07	$2.14	$2.24	$2.42
1.5	1.89	1.94	1.99	2.07	2.14	2.24	2.42
2.0	1.96	2.03	2.09	2.20	2.30	2.43	2.66
2.5	2.04	2.12	2.20	2.33	2.46	2.62	2.91
3.0	2.11	2.21	2.30	2.46	2.62	2.81	3.16
3.5	2.19	2.30	2.41	2.60	2.78	3.00	3.41
4.0	2.26	2.39	2.51	2.72	2.93	3.19	3.65
4.5	2.33	2.48	2.62	2.86	3.09	3.38	3.90
5	2.41	2.57	2.72	2.99	3.25	3.57	4.15
6	2.56	2.74	2.93	3.25	3.57	3.95	4.64
7	2.70	2.92	3.15	3.51	3.88	4.33	5.14
8	2.85	3.10	3.36	3.78	4.20	4.71	5.63
9	3.00	3.28	3.57	4.04	4.52	5.08	6.13
10	3.15	3.46	3.78	4.30	4.83	5.46	6.62
11	3.29	3.64	3.99	4.57	5.15	5.84	7.12
12	3.44	3.82	4.20	4.83	5.46	6.22	7.61
13	3.59	4.00	4.41	5.10	5.78	6.60	8.11
14	3.74	4.18	4.62	5.36	6.10	6.98	8.60
15	3.88	4.36	4.83	5.62	6.41	7.36	9.10

1. Bound Printed Matter automation compatible flats may be eligible for barcoded discount (see 163.1.4) of $0.03 per flat (50-piece minimum).

Bound Printed Matter

RETAIL PARCELS

Weight Not Over (pounds) [1]	Zone						
	Local, 1 & 2	3	4	5	6	7	8
1.0	$1.97	$2.02	$2.07	$2.15	$2.22	$2.32	$2.50
1.5	1.97	2.02	2.07	2.15	2.22	2.32	2.50
2.0	2.04	2.11	2.17	2.28	2.38	2.51	2.74
2.5	2.12	2.20	2.28	2.41	2.54	2.70	2.99
3.0	2.19	2.29	2.38	2.54	2.70	2.89	3.24
3.5	2.27	2.38	2.49	2.68	2.86	3.08	3.49
4.0	2.34	2.47	2.59	2.80	3.01	3.27	3.73
4.5	2.41	2.56	2.70	2.94	3.17	3.46	3.98
5	2.49	2.65	2.80	3.07	3.33	3.65	4.23
6	2.64	2.82	3.01	3.33	3.65	4.03	4.72
7	2.78	3.00	3.23	3.59	3.96	4.41	5.22
8	2.93	3.18	3.44	3.86	4.28	4.79	5.71
9	3.08	3.36	3.65	4.12	4.60	5.16	6.21
10	3.23	3.54	3.86	4.38	4.91	5.54	6.70
11	3.37	3.72	4.07	4.65	5.23	5.92	7.20
12	3.52	3.90	4.28	4.91	5.54	6.30	7.69
13	3.67	4.08	4.49	5.18	5.86	6.68	8.19
14	3.82	4.26	4.70	5.44	6.18	7.06	8.68
15	3.96	4.44	4.91	5.70	6.49	7.44	9.18

1. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).

Media Mail

RETAIL FLATS & PARCELS

Weight Not Over (pounds)	Single-Piece [1]
1	$1.59
2	2.07
3	2.55
4	3.03
5	3.51
6	3.99
7	4.47
8	4.81
9	5.15
10	5.49
11	5.83
12	6.17
13	6.51
14	6.85
15	7.19
16	7.53
17	7.87
18	8.21
19	8.55
20	8.89
21	9.23
22	9.57
23	9.91
24	10.25
25	10.59
26	10.93
27	11.27
28	11.61
29	11.95
30	12.29
31	12.63
32	12.97
33	13.31
34	13.65
35	13.99
36	$14.33
37	14.67
38	15.01
39	15.35
40	15.69
41	16.03
42	16.37
43	16.71
44	17.05
45	17.39
46	17.73
47	18.07
48	18.41
49	18.75
50	19.09
51	19.43
52	19.77
53	20.11
54	20.45
55	20.79
56	21.13
57	21.47
58	21.81
59	22.15
60	22.49
61	22.83
62	23.17
63	23.51
64	23.85
65	24.19
66	24.53
67	24.87
68	25.21
69	25.55
70	25.89

1. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).

Library Mail

RETAIL FLATS & PARCELS

Weight Not Over (pounds)	Single-Piece [1]
1	$1.51
2	1.97
3	2.43
4	2.89
5	3.35
6	3.81
7	4.27
8	4.59
9	4.91
10	5.23
11	5.55
12	5.87
13	6.19
14	6.51
15	6.83
16	7.15
17	7.47
18	7.79
19	8.11
20	8.43
21	8.75
22	9.07
23	9.39
24	9.71
25	10.03
26	10.35
27	10.67
28	10.99
29	11.31
30	11.63
31	11.95
32	12.27
33	12.59
34	12.91
35	13.23
36	$13.55
37	13.87
38	14.19
39	14.51
40	14.83
41	15.15
42	15.47
43	15.79
44	16.11
45	16.43
46	16.75
47	17.07
48	17.39
49	17.71
50	18.03
51	18.35
52	18.67
53	18.99
54	19.31
55	19.63
56	19.95
57	20.27
58	20.59
59	20.91
60	21.23
61	21.55
62	21.87
63	22.19
64	22.51
65	22.83
66	23.15
67	23.47
68	23.79
69	24.11
70	24.43

1. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).

Retail Mail: Parcel Post (Local and Intra-BMC/ASF)

Retail Mail

Parcel Post (Local and Intra-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1&2	3	4	5	Local	1&2	3	4	5
1	$2.96	$3.12	$3.15	$3.21	$3.31	$4.38	$4.54	$4.57	$4.63	$4.73
2	3.30	3.72	3.75	3.83	3.94	4.72	5.14	5.17	5.25	5.36
3	3.63	4.30	4.33	4.43	4.55	5.05	5.72	5.75	5.85	5.97
4	3.93	4.51	4.87	4.97	5.12	5.35	5.93	6.29	6.39	6.54
5	4.21	4.69	5.29	5.43	5.64	5.63	6.11	6.71	6.85	7.06
6	4.46	4.86	5.67	5.81	6.11	5.88	6.28	7.09	7.23	7.53
7	4.60	5.02	6.00	6.16	6.55	6.02	6.44	7.42	7.58	7.97
8	4.70	5.62	6.30	6.47	6.96	6.12	7.04	7.72	7.89	8.38
9	4.81	5.75	6.56	6.80	7.33	6.23	7.17	7.98	8.22	8.75
10	4.91	5.93	6.88	7.10	7.67	6.33	7.35	8.30	8.52	9.09
11	5.00	6.07	7.10	7.38	7.99	6.42	7.49	8.52	8.80	9.41
12	5.10	6.23	7.31	7.65	8.29	6.52	7.65	8.73	9.07	9.71
13	5.19	6.37	7.48	7.91	8.57	6.61	7.79	8.90	9.33	9.99
14	5.27	6.49	7.61	8.17	8.83	6.69	7.91	9.03	9.59	10.25
15	5.35	6.61	7.79	8.39	9.09	6.77	8.03	9.21	9.81	10.51
16	5.45	6.72	7.97	8.60	9.32	6.87	8.14	9.39	10.02	10.74
17	5.51	6.86	8.14	8.83	9.54	6.93	8.28	9.56	10.25	10.96
18	5.59	6.96	8.29	9.03	9.74	7.01	8.38	9.71	10.45	11.16
19	5.65	7.08	8.45	9.22	9.94	7.07	8.50	9.87	10.64	11.36
20	5.75	7.19	8.60	9.39	10.12	7.17	8.61	10.02	10.81	11.54
21	5.81	7.28	8.75	9.55	10.30	7.23	8.70	10.17	10.97	11.72
22	5.87	7.40	8.87	9.70	10.46	7.29	8.82	10.29	11.12	11.88
23	5.94	7.48	9.04	9.84	10.61	7.36	8.90	10.46	11.26	12.03
24	6.01	7.58	9.17	9.97	10.77	7.43	9.00	10.59	11.39	12.19
25	6.08	7.66	9.30	10.10	10.91	7.50	9.08	10.72	11.52	12.33
26	6.13	7.77	9.41	10.23	11.05	7.55	9.19	10.83	11.65	12.47
27	6.20	7.85	9.55	10.35	11.17	7.62	9.27	10.97	11.77	12.59
28	6.26	7.93	9.68	10.45	11.30	7.68	9.35	11.10	11.87	12.72
29	6.33	8.02	9.80	10.56	11.41	7.75	9.44	11.22	11.98	12.83
30	6.41	8.11	9.91	10.67	11.52	7.83	9.53	11.33	12.09	12.94
31	6.46	8.19	9.99	10.76	11.64	7.88	9.61	11.41	12.18	13.06
32	6.51	8.28	10.12	10.87	11.73	7.93	9.70	11.54	12.29	13.15
33	6.59	8.35	10.22	10.95	11.84	8.01	9.77	11.64	12.37	13.26
34	6.64	8.43	10.31	11.04	11.92	8.06	9.85	11.73	12.46	13.34
35	6.69	8.50	10.42	11.12	12.02	8.11	9.92	11.84	12.54	13.44

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $1.42 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Local and Intra-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1&2	3	4	5	Local	1&2	3	4	5
36	For parcels over 35 pounds, use nonmachinable rates.					$8.17	$9.99	$11.93	$12.61	$13.52
37	---	---	---	---	---	8.21	10.08	12.02	12.70	13.60
38	---	---	---	---	---	8.26	10.15	12.12	12.77	13.68
39	---	---	---	---	---	8.33	10.23	12.22	12.83	13.75
40	---	---	---	---	---	8.39	10.28	12.30	12.90	13.83
41	---	---	---	---	---	8.45	10.38	12.41	12.96	13.90
42	---	---	---	---	---	8.50	10.43	12.49	13.04	13.96
43	---	---	---	---	---	8.56	10.49	12.57	13.10	14.02
44	---	---	---	---	---	8.63	10.57	12.66	13.16	14.07
45	---	---	---	---	---	8.67	10.62	12.73	13.33	14.12
46	---	---	---	---	---	8.71	10.72	12.82	13.38	14.17
47	---	---	---	---	---	8.78	10.79	12.89	13.44	14.23
48	---	---	---	---	---	8.83	10.84	12.98	13.48	14.28
49	---	---	---	---	---	8.87	10.92	13.06	13.53	14.33
50	---	---	---	---	---	8.92	10.95	13.13	13.57	14.38
51	---	---	---	---	---	8.99	11.04	13.19	13.63	14.44
52	---	---	---	---	---	9.02	11.11	13.30	13.67	14.49
53	---	---	---	---	---	9.07	11.14	13.35	13.70	14.54
54	---	---	---	---	---	9.14	11.20	13.39	13.75	14.60
55	---	---	---	---	---	9.19	11.26	13.44	13.80	14.65
56	---	---	---	---	---	9.22	11.33	13.48	13.85	14.70
57	---	---	---	---	---	9.27	11.40	13.50	13.87	14.75
58	---	---	---	---	---	9.33	11.45	13.54	13.91	14.81
59	---	---	---	---	---	9.38	11.51	13.57	13.95	14.86
60	---	---	---	---	---	9.40	11.58	13.60	13.97	14.91
61	---	---	---	---	---	9.49	11.64	13.64	14.02	14.96
62	---	---	---	---	---	9.51	11.70	13.67	14.08	15.02
63	---	---	---	---	---	9.57	11.75	13.69	14.15	15.07
64	---	---	---	---	---	9.62	11.81	13.71	14.21	15.12
65	---	---	---	---	---	9.66	11.87	13.75	14.27	15.17
66	---	---	---	---	---	9.69	11.94	13.77	14.34	15.23
67	---	---	---	---	---	9.77	12.00	13.80	14.42	15.28
68	---	---	---	---	---	9.81	12.02	13.82	14.46	15.33
69	---	---	---	---	---	9.82	12.10	13.84	14.53	15.39
70	---	---	---	---	---	9.83	12.15	13.87	14.60	15.44
Oversized	---	---	---	---	---	25.06	36.33	36.67	37.40	38.50

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $1.42 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Retail Mail: Parcel Post (Inter-BMC/ASF)

Retail Mail

Parcel Post (Inter-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]							Nonmachinable[1, 2, 4, 5]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$3.89	$3.95	$3.95	$3.95	$3.95	$3.95	$3.95	$6.79	$6.85	$6.85	$6.85	$6.85	$6.85	$6.85
2	4.06	4.06	4.36	4.36	4.73	4.73	4.73	6.96	6.96	7.26	7.26	7.63	7.63	7.63
3	4.90	4.90	5.85	5.96	6.02	6.08	6.66	7.80	7.80	8.75	8.86	8.92	8.98	9.56
4	5.12	5.48	6.63	7.30	7.53	7.59	8.29	8.02	8.38	9.53	10.20	10.43	10.49	11.19
5	5.30	6.02	7.31	8.17	9.04	9.11	9.94	8.20	8.92	10.21	11.07	11.94	12.01	12.84
6	5.93	6.33	7.84	8.96	10.03	10.43	12.11	8.83	9.23	10.74	11.86	12.93	13.33	15.01
7	6.11	6.62	8.34	9.70	10.91	12.01	13.52	9.01	9.52	11.24	12.60	13.81	14.91	16.42
8	6.30	6.88	8.75	10.37	11.71	13.22	15.85	9.20	9.78	11.65	13.27	14.61	16.12	18.75
9	6.44	7.13	9.21	11.01	12.47	14.10	17.96	9.34	10.03	12.11	13.91	15.37	17.00	20.86
10	6.62	7.98	9.59	11.60	13.18	14.94	19.12	9.52	10.88	12.49	14.50	16.08	17.84	22.02
11	6.76	8.22	9.98	12.16	13.84	15.73	20.18	9.66	11.12	12.88	15.06	16.74	18.63	23.08
12	6.89	8.44	10.33	12.69	14.46	16.46	21.19	9.79	11.34	13.23	15.59	17.36	19.36	24.09
13	7.03	8.63	10.67	13.19	15.05	17.15	22.12	9.93	11.53	13.57	16.09	17.95	20.05	25.02
14	7.17	8.87	10.99	13.65	15.61	17.81	23.02	10.07	11.77	13.89	16.55	18.51	20.71	25.92
15	7.29	9.07	11.31	14.10	16.14	18.43	23.86	10.19	11.97	14.21	17.00	19.04	21.33	26.76
16	7.40	9.26	11.59	14.52	16.64	19.02	24.67	10.30	12.16	14.49	17.42	19.54	21.92	27.57
17	7.54	9.42	11.89	14.92	17.12	19.59	25.43	10.44	12.32	14.79	17.82	20.02	22.49	28.33
18	7.64	9.60	12.14	15.30	17.58	20.12	26.16	10.54	12.50	15.04	18.20	20.48	23.02	29.06
19	7.77	9.78	12.41	15.67	18.01	20.64	26.86	10.67	12.68	15.31	18.57	20.91	23.54	29.76
20	7.86	9.94	12.63	16.02	18.42	21.13	27.53	10.76	12.84	15.53	18.92	21.32	24.03	30.43
21	7.98	10.11	12.86	16.36	18.82	21.60	28.16	10.88	13.01	15.76	19.26	21.72	24.50	31.06
22	8.07	10.24	13.09	16.67	19.20	22.05	28.77	10.97	13.14	15.99	19.57	22.10	24.95	31.67
23	8.18	10.42	13.33	16.98	19.57	22.47	29.35	11.08	13.32	16.23	19.88	22.47	25.37	32.25
24	8.25	10.55	13.52	17.28	19.92	22.89	29.92	11.15	13.45	16.42	20.18	22.82	25.79	32.82
25	8.36	10.69	13.73	17.56	20.26	23.28	30.46	11.26	13.59	16.63	20.46	23.16	26.18	33.36
26	8.44	10.82	13.92	17.83	20.58	23.67	30.98	11.34	13.72	16.82	20.73	23.48	26.57	33.88
27	8.55	10.96	14.10	18.10	20.90	24.04	31.48	11.45	13.86	17.00	21.00	23.80	26.94	34.38
28	8.62	11.09	14.31	18.35	21.20	24.39	31.96	11.52	13.99	17.21	21.25	24.10	27.29	34.86
29	8.72	11.23	14.49	18.59	21.49	24.74	32.42	11.62	14.13	17.39	21.49	24.39	27.64	35.32
30	8.80	11.34	14.65	18.83	21.77	25.06	32.87	11.70	14.24	17.55	21.73	24.67	27.96	35.77
31	8.90	11.45	14.82	19.06	22.04	25.38	33.31	11.80	14.35	17.72	21.96	24.94	28.28	36.21
32	8.96	11.58	14.99	19.28	22.30	25.69	33.73	11.86	14.48	17.89	22.18	25.20	28.59	36.63
33	9.04	11.70	15.16	19.49	22.56	25.98	34.13	11.94	14.60	18.06	22.39	25.46	28.88	37.03
34	9.13	11.78	15.29	19.70	22.80	26.28	34.52	12.03	14.68	18.19	22.60	25.70	29.18	37.42
35	9.21	11.91	15.45	19.90	23.03	26.55	34.90	12.11	14.81	18.35	22.80	25.93	29.45	37.80

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]							Nonmachinable[1, 2, 4, 5]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
36	For parcels over 35 pounds, use nonmachinable rates.							$12.18	$14.91	$18.52	$22.99	$26.16	$29.72	$38.16
37	---	---	---	---	---	---	---	12.25	15.00	18.64	23.17	26.38	29.98	38.51
38	---	---	---	---	---	---	---	12.32	15.13	18.78	23.36	26.59	30.23	38.86
39	---	---	---	---	---	---	---	12.41	15.20	18.91	23.53	26.80	30.48	39.19
40	---	---	---	---	---	---	---	12.48	15.32	19.05	23.70	27.00	30.72	39.52
41	---	---	---	---	---	---	---	12.57	15.42	19.17	23.86	27.21	30.95	39.83
42	---	---	---	---	---	---	---	12.63	15.51	19.30	24.02	27.39	31.17	40.14
43	---	---	---	---	---	---	---	12.68	15.60	19.43	24.18	27.57	31.39	40.43
44	---	---	---	---	---	---	---	12.75	15.67	19.54	24.33	27.75	31.60	40.72
45	---	---	---	---	---	---	---	12.82	15.78	19.67	24.48	27.93	31.81	40.99
46	---	---	---	---	---	---	---	12.89	15.86	19.79	24.62	28.10	32.01	41.27
47	---	---	---	---	---	---	---	12.98	15.96	19.89	24.76	28.26	32.20	41.53
48	---	---	---	---	---	---	---	13.03	16.04	20.02	24.89	28.43	32.39	41.78
49	---	---	---	---	---	---	---	13.08	16.13	20.12	25.02	28.58	32.57	42.04
50	---	---	---	---	---	---	---	13.14	16.19	20.21	25.15	28.73	32.75	42.28
51	---	---	---	---	---	---	---	13.22	16.29	20.33	25.28	28.88	32.93	42.52
52	---	---	---	---	---	---	---	13.27	16.37	20.43	25.39	29.03	33.10	42.74
53	---	---	---	---	---	---	---	13.35	16.43	20.50	25.51	29.17	33.27	42.97
54	---	---	---	---	---	---	---	13.40	16.54	20.62	25.62	29.30	33.42	43.18
55	---	---	---	---	---	---	---	13.45	16.57	20.72	25.74	29.43	33.58	43.41
56	---	---	---	---	---	---	---	13.53	16.69	20.81	25.85	29.57	33.73	43.61
57	---	---	---	---	---	---	---	13.59	16.75	20.91	25.95	29.69	33.88	43.82
58	---	---	---	---	---	---	---	13.64	16.82	20.99	26.06	29.81	34.02	44.01
59	---	---	---	---	---	---	---	13.71	16.89	21.09	26.16	29.94	34.17	44.21
60	---	---	---	---	---	---	---	13.77	16.96	21.19	26.26	30.05	34.31	44.39
61	---	---	---	---	---	---	---	13.85	17.06	21.26	26.35	30.17	34.44	44.58
62	---	---	---	---	---	---	---	13.90	17.11	21.35	26.45	30.27	34.57	44.75
63	---	---	---	---	---	---	---	13.94	17.19	21.44	26.54	30.39	34.70	44.92
64	---	---	---	---	---	---	---	13.99	17.24	21.51	26.63	30.49	34.83	45.09
65	---	---	---	---	---	---	---	14.05	17.32	21.60	26.72	30.60	34.95	45.26
66	---	---	---	---	---	---	---	14.13	17.39	21.67	26.80	30.69	35.07	45.43
67	---	---	---	---	---	---	---	14.19	17.46	21.76	26.89	30.80	35.18	45.59
68	---	---	---	---	---	---	---	14.23	17.52	21.85	26.97	30.89	35.30	45.73
69	---	---	---	---	---	---	---	14.28	17.57	21.92	27.05	30.99	35.41	45.89
70	---	---	---	---	---	---	---	14.35	17.66	22.00	27.12	31.08	35.52	46.04
Oversized	---	---	---	---	---	---	---	43.95	49.25	57.04	69.40	83.99	97.82	127.24

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

First-Class Mail

DISCOUNT LETTERS & CARDS

Weight Not Over (ounces) [1]	Nonautomation	Automation				
	Presorted	Mixed AADC	AADC	3-Digit	5-Digit	Carrier Route
1	$0.371 [2]	$0.326	$0.317	$0.308	$0.293	$0.290
2	0.608	0.563	0.554	0.545	0.530	0.527
3	0.802	0.757	0.748	0.739	0.724	0.721
3.3	1.039	0.994	0.985	0.976	0.961	0.958
4	1.039	---	---	---	---	---
5	1.276	---	---	---	---	---
6	1.513	---	---	---	---	---
7	1.750	---	---	---	---	---
8	1.987	---	---	---	---	---
9	2.224	---	---	---	---	---
10	2.461	---	---	---	---	---
11	2.698	---	---	---	---	---
12	2.935	---	---	---	---	---
13	3.172	---	---	---	---	---
Card Rate [3]	$0.223	$0.204	$0.197	$0.193	$0.186	$0.179

1. For each additional ounce, postage includes $0.237 for presorted and automation rates. The rates include a $0.043 discount for presorted and automation rate pieces weighing more than 2 ounces.
2. Letters weighing 1 oz. or less may be subject to a nonmachinable surcharge of $0.058 per piece.
3. Rates shown apply to each single or double postcard when originally mailed; reply half of double postcard must bear postage at applicable rate when returned unless prepared as business reply mail.

Standard Mail Regular

DISCOUNT LETTERS

	Entry Discount	Presorted [1] Basic	Presorted [1] 3/5	Enhanced Carrier Route (ECR) [2] Basic	Enhanced Carrier Route (ECR) [2] High Density	Enhanced Carrier Route (ECR) [2] Saturation	Enhanced Carrier Route (ECR) [2] Automation Basic	Automation Mixed AADC	Automation AADC	Automation 3-Digit	Automation 5-Digit
Letters weighing 3.3 oz. or less	None	$0.282	$0.261	$0.204	$0.173	$0.160	$0.180	$0.231	$0.223	$0.214	$0.200
	DBMC	0.260	0.239	0.182	0.151	0.138	0.158	0.209	0.201	0.192	0.178
	DSCF	0.255	0.234	0.177	0.146	0.133	0.153	---	0.196	0.187	0.173
per piece rate	DDU	---	---	0.171	0.140	0.127	0.147	---	---	---	---
more than 3.3 oz [3]	None	$0.746	$0.746	$0.643	$0.643	$0.643	$0.643	$0.746	$0.746	$0.746	$0.746
	DBMC	0.641	0.641	0.538	0.538	0.538	0.538	0.641	0.641	0.641	0.641
	DSCF	0.614	0.614	0.511	0.511	0.511	0.511	0.614	0.614	0.614	0.614
per pound rate	DDU	---	---	0.477	0.477	0.477	0.477	---	---	---	---
+		+	+	+	+	+	+	+	+	+	+
per piece rate		0.209	0.150	0.071	0.040 [4]	0.027 [4]	0.047 [4]	0.077 [4]	0.069 [4]	0.060 [4]	0.046 [4]

1. Nonmachinable letters (see 201.2.0) are subject to a surcharge of $0.042.
2. ECR High Density letters or ECR Saturation letters that are not automation-compatible (201.3.0) are mailable at the applicable rate for a flat-size piece (243.6.4 or 243.6.5).
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
4. Per piece rate for ECR letters and automation letters that weigh more than 3.3 oz. but less than (or equal to) 3.5 oz. includes a discount from the flat-size rate (more than 3.3 oz.) that equals the applicable flat-size rate (3.3 oz. or less) minus the applicable letter piece rate (3.3 oz. or less).

Standard Mail Nonprofit

DISCOUNT LETTERS

	Entry Discount	Presorted [1] Basic	Presorted [1] 3/5	Enhanced Carrier Route (ECR) [2] Basic	Enhanced Carrier Route (ECR) [2] High Density	Enhanced Carrier Route (ECR) [2] Saturation	Enhanced Carrier Route (ECR) [2] Automation Basic	Automation Mixed AADC	Automation AADC	Automation 3-Digit	Automation 5-Digit
Letters weighing 3.3 oz. or less	None	$0.170	$0.158	$0.140	$0.113	$0.105	$0.117	$0.148	$0.140	$0.133	$0.118
	DBMC	0.148	0.136	0.118	0.091	0.083	0.095	0.126	0.118	0.111	0.096
	DSCF	0.143	0.131	0.113	0.086	0.078	0.090	---	0.113	0.106	0.091
per piece rate	DDU	---	---	0.107	0.080	0.072	0.084	---	---	---	---
more than 3.3 oz [3]	None	$0.602	$0.602	$0.411	$0.411	$0.411	$0.411	$0.602	$0.602	$0.602	$0.602
	DBMC	0.497	0.497	0.306	0.306	0.306	0.306	0.497	0.497	0.497	0.497
	DSCF	0.470	0.470	0.279	0.279	0.279	0.279	0.470	0.470	0.470	0.470
per pound rate	DDU	---	---	0.245	0.245	0.245	0.245	---	---	---	---
+		+	+	+	+	+	+	+	+	+	+
per piece rate		0.113	0.065	0.055	0.028 [4]	0.020 [4]	0.032 [4]	0.024 [4]	0.016 [4]	0.009 [4]	-0.006 [4]

1. Nonmachinable letters (see 201.2.0) are subject to a surcharge of $0.021.
2. ECR High Density letters or ECR Saturation letters that are not automation-compatible (201.3.0) are mailable at the applicable rate for a flat-size piece (243.6.4 or 243.6.5).
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
4. Per piece rate for ECR letters and automation letters that weigh more than 3.3 oz. but less than (or equal to) 3.5 oz. includes a discount from the flat-size rate (more than 3.3 oz.) that equals the applicable flat-size rate (3.3 oz. or less) minus the applicable letter piece rate (3.3 oz. or less).

First-Class Mail

DISCOUNT FLATS

Weight Not Over (ounces) [1]	Nonautomation	Automation			
	Presorted	Mixed ADC	ADC	3-Digit	5-Digit
1 [2]	$0.371	$0.359	$0.351	$0.339	$0.318
2	0.608	0.596	0.588	0.576	0.555
3	0.802	0.790	0.782	0.770	0.749
4	1.039	1.027	1.019	1.007	0.986
5	1.276	1.264	1.256	1.244	1.223
6	1.513	1.501	1.493	1.481	1.460
7	1.750	1.738	1.730	1.718	1.697
8	1.987	1.975	1.967	1.955	1.934
9	2.224	2.212	2.204	2.192	2.171
10	2.461	2.449	2.441	2.429	2.408
11	2.698	2.686	2.678	2.666	2.645
12	2.935	2.923	2.915	2.903	2.882
13	3.172	3.160	3.152	3.140	3.119

1. For each additional ounce, computed postage includes $0.237 for presorted and automation rates. The rates include a $0.043 discount for presorted and automation rate flats weighing more than 2 ounces.
2. Flats weighing 1 oz. or less may be subject to a nonmachinable surcharge of $0.058 per piece.

Bound Printed Matter

DISCOUNT FLATS

Each piece is subject to both a per piece rate and a pound rate [1]		Presorted [2]			Carrier Route		
		Rate per piece	+	Rate per pound	Rate per piece	+	Rate per pound
Zone	Local, 1&2	$1.136	+	$0.095	$1.031	+	$0.095
	3	1.136	+	0.118	1.031	+	0.118
	4	1.136	+	0.157	1.031	+	0.157
	5	1.136	+	0.209	1.031	+	0.209
	6	1.136	+	0.261	1.031	+	0.261
	7	1.136	+	0.325	1.031	+	0.325
	8	1.136	+	0.442	1.031	+	0.442
Destination Entry							
DBMC	1&2	0.862	+	0.077	0.757	+	0.077
	3	0.862	+	0.108	0.757	+	0.108
	4	0.862	+	0.147	0.757	+	0.147
	5	0.862	+	0.197	0.757	+	0.197
DSCF		0.636	+	0.063	0.531	+	0.063
DDU		0.561 [3]	+	0.032	0.456	+	0.032

1. Multiply the number of pounds in the mailing by rate per pound. Multiply the number of pieces in the mailing by rate per piece. Add both totals.
2. For barcoded discount, deduct $0.03 per piece (automation compatible flats only). Barcoded discount not available for pieces mailed at presorted DDU rates.
3. Each flat must weigh more than 1 pound to be eligible for presorted DDU rate.

Discount Flats: Standard Mail Regular • Nonprofit

Standard Mail Regular

DISCOUNT FLATS

	Entry Discount	Presorted		Enhanced Carrier Route			Automation	
		Basic	3/5	Basic	High Density	Saturation	Basic	3/5
Flats weighing 3.3 oz. or less	None	$0.363	$0.304	$0.204	$0.178	$0.169	$0.316	$0.275
	DBMC	0.341	0.282	0.182	0.156	0.147	0.294	0.253
	DSCF	0.336	0.277	0.177	0.151	0.142	0.289	0.248
per piece rate	DDU	---	---	0.171	0.145	0.136	---	---
more than 3.3 oz [1]	None	$0.746	$0.746	$0.643	$0.643	$0.643	$0.746	$0.746
	DBMC	0.641	0.641	0.538	0.538	0.538	0.641	0.641
	DSCF	0.614	0.614	0.511	0.511	0.511	0.614	0.614
per pound rate	DDU	---	---	0.477	0.477	0.477	---	---
+		+	+	+	+	+	+	+
per piece rate		0.209	0.150	0.071	0.045	0.036	0.162	0.121

1. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

DISCOUNT FLATS

	Entry Discount	Presorted		Enhanced Carrier Route			Automation	
		Basic	3/5	Basic	High Density	Saturation	Basic	3/5
Flats weighing 3.3 oz. or less	None	$0.237	$0.189	$0.140	$0.122	$0.116	$0.195	$0.171
	DBMC	0.215	0.167	0.118	0.100	0.094	0.173	0.149
	DSCF	0.210	0.162	0.113	0.095	0.089	0.168	0.144
per piece rate	DDU	---	---	0.107	0.089	0.083	---	---
more than 3.3 oz [1]	None	$0.602	$0.602	$0.411	$0.411	$0.411	$0.602	$0.602
	DBMC	0.497	0.497	0.306	0.306	0.306	0.497	0.497
	DSCF	0.470	0.470	0.279	0.279	0.279	0.470	0.470
per pound rate	DDU	----	---	0.245	0.245	0.245	---	---
+		+	+	+	+	+	+	+
per piece rate		0.113	0.065	0.055	0.037	0.031	0.071	0.047

1. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Media Mail
DISCOUNT FLATS

Weight Not Over (pounds)	Basic	5-Digit
1	$1.26	$0.90
2	1.74	1.38
3	2.22	1.86
4	2.70	2.34
5	3.18	2.82

Library Mail
DISCOUNT FLATS

Weight Not Over (pounds)	Basic	5-Digit
1	$1.20	$0.86
2	1.66	1.32
3	2.12	1.78
4	2.58	2.24
5	3.04	2.70

Discount Parcels: First-Class Mail • Bound Printed Matter

First-Class Mail

DISCOUNT PARCELS

Weight Not Over (ounces) [1]	Presorted
1 [2]	$0.371
2	0.608
3	0.802
4	1.039
5	1.276
6	1.513
7	1.750
8	1.987
9	2.224
10	2.461
11	2.698
12	2.935
13	3.172

1. For each additional ounce, postage includes $0.237 for presorted rates. The rates include a $0.043 discount for presorted parcels weighing more than 2 ounces.
2. Parcels weighing 1 oz. or less are subject to nonmachinable surcharge of $0.058 per piece.

Bound Printed Matter

DISCOUNT PARCELS

Each piece is subject to both a per piece rate and a pound rate [1]		Presorted [2]			Carrier Route		
		Rate per piece	+	Rate per pound	Rate per piece	+	Rate per pound
Zone	Local, 1&2	$1.217	+	$0.095	$1.112	+	$0.095
	3	1.217	+	0.118	1.112	+	0.118
	4	1.217	+	0.157	1.112	+	0.157
	5	1.217	+	0.209	1.112	+	0.209
	6	1.217	+	0.261	1.112	+	0.261
	7	1.217	+	0.325	1.112	+	0.325
	8	1.217	+	0.442	1.112	+	0.442
Destination Entry							
DBMC	1&2	0.943	+	0.077	0.838	+	0.077
	3	0.943	+	0.108	0.838	+	0.108
	4	0.943	+	0.147	0.838	+	0.147
	5	0.943	+	0.197	0.838	+	0.197
DSCF		0.717	+	0.063	0.612	+	0.063
DDU		0.642	+	0.032	0.537	+	0.032

1. Multiply the number of pounds in the mailing by rate per pound. Multiply the number of pieces in the mailing by rate per piece. Add both totals.
2. Machinable presorted parcels may be eligible for barcoded discount of $0.03 per parcel, except for parcels mailed at presorted DDU or DSCF rates.

Standard Mail Regular

DISCOUNT PARCELS

	Entry Discount	Presorted [1]		Enhanced Carrier Route [2]		
		Basic	3/5	Basic	High Density	Saturation
Parcels weighing 3.3 oz. or less	None	$0.605 [3]	$0.546	$0.415	$0.389	$0.380
	DBMC	0.583	0.524	0.393	0.367	0.358
	DSCF	0.578	0.519	0.388	0.362	0.353
per piece rate	DDU			0.382	0.356	0.347
more than 3.3 oz [4]	None	$0.746	$0.746	$0.643	$0.643	$0.643
	DBMC	0.641	0.641	0.538	0.538	0.538
	DSCF	0.614	0.614	0.511	0.511	0.511
per pound rate	DDU	---	---	0.477	0.477	0.477
+		+	+	+	+	+
per piece rate		0.451 [5]	0.392 [5]	0.282	0.256	0.247

1. Per piece rate for presorted parcels includes residual shape surcharge of $0.242.
2. Per piece rate for ECR parcels includes residual shape surcharge of $0.211.
3. Use this rate for Customized MarketMail pieces.
4. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
5. Presorted machinable parcels for which the residual shape surcharge is paid may be eligible for the barcoded discount of $0.03 per parcel (see 443.5.5).

Standard Mail Nonprofit

DISCOUNT PARCELS

	Entry Discount	Presorted [1]		Enhanced Carrier Route [2]		
		Basic	3/5	Basic	High Density	Saturation
Parcels weighing 3.3 oz. or less	None	$0.479 [3]	$0.431	$0.351	$0.333	$0.327
	DBMC	0.457	0.409	0.329	0.311	0.305
	DSCF	0.452	0.404	0.324	0.306	0.300
per piece rate	DDU	---	---	0.318	0.300	0.294
more than 3.3 oz [4]	None	$0.602	$0.602	$0.411	$0.411	$0.411
	DBMC	0.497	0.497	0.306	0.306	0.306
	DSCF	0.470	0.470	0.279	0.279	0.279
per pound rate	DDU	---	---	0.245	0.245	0.245
+		+	+	+	+	+
per piece rate		0.355 [5]	0.307 [5]	0.266	0.248	0.242

1. Per piece rate for presorted parcels includes residual shape surcharge of $0.242.
2. Per piece rate for ECR parcels includes residual shape surcharge of $0.211.
3. Use this rate for Customized MarketMail pieces.
4. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
5. Presorted machinable parcels for which the residual shape surcharge is paid may be eligible for the barcoded discount of $0.03 per parcel (see 443.5.5).

Discount Parcels: Media Mail

Media Mail

DISCOUNT PARCELS

Weight Not Over (pounds)	Basic [1]	5-Digit
1	$1.26	$0.90
2	1.74	1.38
3	2.22	1.86
4	2.70	2.34
5	3.18	2.82
6	3.66	3.30
7	4.14	3.78
8	4.48	4.12
9	4.82	4.46
10	5.16	4.80
11	5.50	5.14
12	5.84	5.48
13	6.18	5.82
14	6.52	6.16
15	6.86	6.50
16	7.20	6.84
17	7.54	7.18
18	7.88	7.52
19	8.22	7.86
20	8.56	8.20
21	8.90	8.54
22	9.24	8.88
23	9.58	9.22
24	9.92	9.56
25	10.26	9.90
26	10.60	10.24
27	10.94	10.58
28	11.28	10.92
29	11.62	11.26
30	11.96	11.60
31	12.30	11.94
32	12.64	12.28
33	12.98	12.62
34	13.32	12.96
35	13.66	13.30

Weight Not Over (pounds)	Basic [1]	5-Digit
36	$14.00	$13.64
37	14.34	13.98
38	14.68	14.32
39	15.02	14.66
40	15.36	15.00
41	15.70	15.34
42	16.04	15.68
43	16.38	16.02
44	16.72	16.36
45	17.06	16.70
46	17.40	17.04
47	17.74	17.38
48	18.08	17.72
49	18.42	18.06
50	18.76	18.40
51	19.10	18.74
52	19.44	19.08
53	19.78	19.42
54	20.12	19.76
55	20.46	20.10
56	20.80	20.44
57	21.14	20.78
58	21.48	21.12
59	21.82	21.46
60	22.16	21.80
61	22.50	22.14
62	22.84	22.48
63	23.18	22.82
64	23.52	23.16
65	23.86	23.50
66	24.20	23.84
67	24.54	24.18
68	24.88	24.52
69	25.22	24.86
70	25.56	25.20

1. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50 piece minimum).

Library Mail

DISCOUNT PARCELS

Weight Not Over (pounds)	Basic [1]	5-Digit
1	$1.20	$0.86
2	1.66	1.32
3	2.12	1.78
4	2.58	2.24
5	3.04	2.70
6	3.50	3.16
7	3.96	3.62
8	4.28	3.94
9	4.60	4.26
10	4.92	4.58
11	5.24	4.90
12	5.56	5.22
13	5.88	5.54
14	6.20	5.86
15	6.52	6.18
16	6.84	6.50
17	7.16	6.82
18	7.48	7.14
19	7.80	7.46
20	8.12	7.78
21	8.44	8.10
22	8.76	8.42
23	9.08	8.74
24	9.40	9.06
25	9.72	9.38
26	10.04	9.70
27	10.36	10.02
28	10.68	10.34
29	11.00	10.66
30	11.32	10.98
31	11.64	11.30
32	11.96	11.62
33	12.28	11.94
34	12.60	12.26
35	12.92	12.58

Weight Not Over (pounds)	Basic [1]	5-Digit
36	$13.24	$12.90
37	13.56	13.22
38	13.88	13.54
39	14.20	13.86
40	14.52	14.18
41	14.84	14.50
42	15.16	14.82
43	15.48	15.14
44	15.80	15.46
45	16.12	15.78
46	16.44	16.10
47	16.76	16.42
48	17.08	16.74
49	17.40	17.06
50	17.72	17.38
51	18.04	17.70
52	18.36	18.02
53	18.68	18.34
54	19.00	18.66
55	19.32	18.98
56	19.64	19.30
57	19.96	19.62
58	20.28	19.94
59	20.60	20.26
60	20.92	20.58
61	21.24	20.90
62	21.56	21.22
63	21.88	21.54
64	22.20	21.86
65	22.52	22.18
66	22.84	22.50
67	23.16	22.82
68	23.48	23.14
69	23.80	23.46
70	24.12	23.78

1. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50 piece minimum).

Discount Parcels: Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

Discount Parcels

Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1&2	3	4	5	Local	1&2	3	4	5
1	$2.96	$3.12	$3.15	$3.21	$3.31	$4.38	$4.54	$4.57	$4.63	$4.73
2	3.30	3.72	3.75	3.83	3.94	4.72	5.14	5.17	5.25	5.36
3	3.63	4.30	4.33	4.43	4.55	5.05	5.72	5.75	5.85	5.97
4	3.93	4.51	4.87	4.97	5.12	5.35	5.93	6.29	6.39	6.54
5	4.21	4.69	5.29	5.43	5.64	5.63	6.11	6.71	6.85	7.06
6	4.46	4.86	5.67	5.81	6.11	5.88	6.28	7.09	7.23	7.53
7	4.60	5.02	6.00	6.16	6.55	6.02	6.44	7.42	7.58	7.97
8	4.70	5.62	6.30	6.47	6.96	6.12	7.04	7.72	7.89	8.38
9	4.81	5.75	6.56	6.80	7.33	6.23	7.17	7.98	8.22	8.75
10	4.91	5.93	6.88	7.10	7.67	6.33	7.35	8.30	8.52	9.09
11	5.00	6.07	7.10	7.38	7.99	6.42	7.49	8.52	8.80	9.41
12	5.10	6.23	7.31	7.65	8.29	6.52	7.65	8.73	9.07	9.71
13	5.19	6.37	7.48	7.91	8.57	6.61	7.79	8.90	9.33	9.99
14	5.27	6.49	7.61	8.17	8.83	6.69	7.91	9.03	9.59	10.25
15	5.35	6.61	7.79	8.39	9.09	6.77	8.03	9.21	9.81	10.51
16	5.45	6.72	7.97	8.60	9.32	6.87	8.14	9.39	10.02	10.74
17	5.51	6.86	8.14	8.83	9.54	6.93	8.28	9.56	10.25	10.96
18	5.59	6.96	8.29	9.03	9.74	7.01	8.38	9.71	10.45	11.16
19	5.65	7.08	8.45	9.22	9.94	7.07	8.50	9.87	10.64	11.36
20	5.75	7.19	8.60	9.39	10.12	7.17	8.61	10.02	10.81	11.54
21	5.81	7.28	8.75	9.55	10.30	7.23	8.70	10.17	10.97	11.72
22	5.87	7.40	8.87	9.70	10.46	7.29	8.82	10.29	11.12	11.88
23	5.94	7.48	9.04	9.84	10.61	7.36	8.90	10.46	11.26	12.03
24	6.01	7.58	9.17	9.97	10.77	7.43	9.00	10.59	11.39	12.19
25	6.08	7.66	9.30	10.10	10.91	7.50	9.08	10.72	11.52	12.33
26	6.13	7.77	9.41	10.23	11.05	7.55	9.19	10.83	11.65	12.47
27	6.20	7.85	9.55	10.35	11.17	7.62	9.27	10.97	11.77	12.59
28	6.26	7.93	9.68	10.45	11.30	7.68	9.35	11.10	11.87	12.72
29	6.33	8.02	9.80	10.56	11.41	7.75	9.44	11.22	11.98	12.83
30	6.41	8.11	9.91	10.67	11.52	7.83	9.53	11.33	12.09	12.94
31	6.46	8.19	9.99	10.76	11.64	7.88	9.61	11.41	12.18	13.06
32	6.51	8.28	10.12	10.87	11.73	7.93	9.70	11.54	12.29	13.15
33	6.59	8.35	10.22	10.95	11.84	8.01	9.77	11.64	12.37	13.26
34	6.64	8.43	10.31	11.04	11.92	8.06	9.85	11.73	12.46	13.34
35	6.69	8.50	10.42	11.12	12.02	8.11	9.92	11.84	12.54	13.44

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $1.42 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1&2	3	4	5	Local	1&2	3	4	5
36	For parcels over 35 pounds, use nonmachinable rates.					$8.17	$9.99	$11.93	$12.61	$13.52
37	---	---	---	---	---	8.21	10.08	12.02	12.70	13.60
38	---	---	---	---	---	8.26	10.15	12.12	12.77	13.68
39	---	---	---	---	---	8.33	10.23	12.22	12.83	13.75
40	---	---	---	---	---	8.39	10.28	12.30	12.90	13.83
41	---	---	---	---	---	8.45	10.38	12.41	12.96	13.90
42	---	---	---	---	---	8.50	10.43	12.49	13.04	13.96
43	---	---	---	---	---	8.56	10.49	12.57	13.10	14.02
44	---	---	---	---	---	8.63	10.57	12.66	13.16	14.07
45	---	---	---	---	---	8.67	10.62	12.73	13.33	14.12
46	---	---	---	---	---	8.71	10.72	12.82	13.38	14.17
47	---	---	---	---	---	8.78	10.79	12.89	13.44	14.23
48	---	---	---	---	---	8.83	10.84	12.98	13.48	14.28
49	---	---	---	---	---	8.87	10.92	13.06	13.53	14.33
50	---	---	---	---	---	8.92	10.95	13.13	13.57	14.38
51	---	---	---	---	---	8.99	11.04	13.19	13.63	14.44
52	---	---	---	---	---	9.02	11.11	13.30	13.67	14.49
53	---	---	---	---	---	9.07	11.14	13.35	13.70	14.54
54	---	---	---	---	---	9.14	11.20	13.39	13.75	14.60
55	---	---	---	---	---	9.19	11.26	13.44	13.80	14.65
56	---	---	---	---	---	9.22	11.33	13.48	13.85	14.70
57	---	---	---	---	---	9.27	11.40	13.50	13.87	14.75
58	---	---	---	---	---	9.33	11.45	13.54	13.91	14.81
59	---	---	---	---	---	9.38	11.51	13.57	13.95	14.86
60	---	---	---	---	---	9.40	11.58	13.60	13.97	14.91
61	---	---	---	---	---	9.49	11.64	13.64	14.02	14.96
62	---	---	---	---	---	9.51	11.70	13.67	14.08	15.02
63	---	---	---	---	---	9.57	11.75	13.69	14.15	15.07
64	---	---	---	---	---	9.62	11.81	13.71	14.21	15.12
65	---	---	---	---	---	9.66	11.87	13.75	14.27	15.17
66	---	---	---	---	---	9.69	11.94	13.77	14.34	15.23
67	---	---	---	---	---	9.77	12.00	13.80	14.42	15.28
68	---	---	---	---	---	9.81	12.02	13.82	14.46	15.33
69	---	---	---	---	---	9.82	12.10	13.84	14.53	15.39
70	---	---	---	---	---	9.83	12.15	13.87	14.60	15.44
Oversized	---	---	---	---	---	25.06	36.33	36.67	37.40	38.50

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $1.42 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Discount Parcels: Parcel Post (Inter-BMC/ASF—Single-Piece)

Parcel Post (Inter-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4] Zone							Nonmachinable[1, 2, 4, 5] Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$3.89	$3.95	$3.95	$3.95	$3.95	$3.95	$3.95	$6.79	$6.85	$6.85	$6.85	$6.85	$6.85	$6.85
2	4.06	4.06	4.36	4.36	4.73	4.73	4.73	6.96	6.96	7.26	7.26	7.63	7.63	7.63
3	4.90	4.90	5.85	5.96	6.02	6.08	6.66	7.80	7.80	8.75	8.86	8.92	8.98	9.56
4	5.12	5.48	6.63	7.30	7.53	7.59	8.29	8.02	8.38	9.53	10.20	10.43	10.49	11.19
5	5.30	6.02	7.31	8.17	9.04	9.11	9.94	8.20	8.92	10.21	11.07	11.94	12.01	12.84
6	5.93	6.33	7.84	8.96	10.03	10.43	12.11	8.83	9.23	10.74	11.86	12.93	13.33	15.01
7	6.11	6.62	8.34	9.70	10.91	12.01	13.52	9.01	9.52	11.24	12.60	13.81	14.91	16.42
8	6.30	6.88	8.75	10.37	11.71	13.22	15.85	9.20	9.78	11.65	13.27	14.61	16.12	18.75
9	6.44	7.13	9.21	11.01	12.47	14.10	17.96	9.34	10.03	12.11	13.91	15.37	17.00	20.86
10	6.62	7.98	9.59	11.60	13.18	14.94	19.12	9.52	10.88	12.49	14.50	16.08	17.84	22.02
11	6.76	8.22	9.98	12.16	13.84	15.73	20.18	9.66	11.12	12.88	15.06	16.74	18.63	23.08
12	6.89	8.44	10.33	12.69	14.46	16.46	21.19	9.79	11.34	13.23	15.59	17.36	19.36	24.09
13	7.03	8.63	10.67	13.19	15.05	17.15	22.12	9.93	11.53	13.57	16.09	17.95	20.05	25.02
14	7.17	8.87	10.99	13.65	15.61	17.81	23.02	10.07	11.77	13.89	16.55	18.51	20.71	25.92
15	7.29	9.07	11.31	14.10	16.14	18.43	23.86	10.19	11.97	14.21	17.00	19.04	21.33	26.76
16	7.40	9.26	11.59	14.52	16.64	19.02	24.67	10.30	12.16	14.49	17.42	19.54	21.92	27.57
17	7.54	9.42	11.89	14.92	17.12	19.59	25.43	10.44	12.32	14.79	17.82	20.02	22.49	28.33
18	7.64	9.60	12.14	15.30	17.58	20.12	26.16	10.54	12.50	15.04	18.20	20.48	23.02	29.06
19	7.77	9.78	12.41	15.67	18.01	20.64	26.86	10.67	12.68	15.31	18.57	20.91	23.54	29.76
20	7.86	9.94	12.63	16.02	18.42	21.13	27.53	10.76	12.84	15.53	18.92	21.32	24.03	30.43
21	7.98	10.11	12.86	16.36	18.82	21.60	28.16	10.88	13.01	15.76	19.26	21.72	24.50	31.06
22	8.07	10.24	13.09	16.67	19.20	22.05	28.77	10.97	13.14	15.99	19.57	22.10	24.95	31.67
23	8.18	10.42	13.33	16.98	19.57	22.47	29.35	11.08	13.32	16.23	19.88	22.47	25.37	32.25
24	8.25	10.55	13.52	17.28	19.92	22.89	29.92	11.15	13.45	16.42	20.18	22.82	25.79	32.82
25	8.36	10.69	13.73	17.56	20.26	23.28	30.46	11.26	13.59	16.63	20.46	23.16	26.18	33.36
26	8.44	10.82	13.92	17.83	20.58	23.67	30.98	11.34	13.72	16.82	20.73	23.48	26.57	33.88
27	8.55	10.96	14.10	18.10	20.90	24.04	31.48	11.45	13.86	17.00	21.00	23.80	26.94	34.38
28	8.62	11.09	14.31	18.35	21.20	24.39	31.96	11.52	13.99	17.21	21.25	24.10	27.29	34.86
29	8.72	11.23	14.49	18.59	21.49	24.74	32.42	11.62	14.13	17.39	21.49	24.39	27.64	35.32
30	8.80	11.34	14.65	18.83	21.77	25.06	32.87	11.70	14.24	17.55	21.73	24.67	27.96	35.77
31	8.90	11.45	14.82	19.06	22.04	25.38	33.31	11.80	14.35	17.72	21.96	24.94	28.28	36.21
32	8.96	11.58	14.99	19.28	22.30	25.69	33.73	11.86	14.48	17.89	22.18	25.20	28.59	36.63
33	9.04	11.70	15.16	19.49	22.56	25.98	34.13	11.94	14.60	18.06	22.39	25.46	28.88	37.03
34	9.13	11.78	15.29	19.70	22.80	26.28	34.52	12.03	14.68	18.19	22.60	25.70	29.18	37.42
35	9.21	11.91	15.45	19.90	23.03	26.55	34.90	12.11	14.81	18.35	22.80	25.93	29.45	37.80

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 4, 5] Zone 1 & 2	3	4	5	6	7	8
36	For parcels over 35 pounds, use nonmachinable rates.							$12.18	$14.91	$18.52	$22.99	$26.16	$29.72	$38.16
37	---	---	---	---	---	---	---	12.25	15.00	18.64	23.17	26.38	29.98	38.51
38	---	---	---	---	---	---	---	12.32	15.13	18.78	23.36	26.59	30.23	38.86
39	---	---	---	---	---	---	---	12.41	15.20	18.91	23.53	26.80	30.48	39.19
40	---	---	---	---	---	---	---	12.48	15.32	19.05	23.70	27.00	30.72	39.52
41	---	---	---	---	---	---	---	12.57	15.42	19.17	23.86	27.21	30.95	39.83
42	---	---	---	---	---	---	---	12.63	15.51	19.30	24.02	27.39	31.17	40.14
43	---	---	---	---	---	---	---	12.68	15.60	19.43	24.18	27.57	31.39	40.43
44	---	---	---	---	---	---	---	12.75	15.67	19.54	24.33	27.75	31.60	40.72
45	---	---	---	---	---	---	---	12.82	15.78	19.67	24.48	27.93	31.81	40.99
46	---	---	---	---	---	---	---	12.89	15.86	19.79	24.62	28.10	32.01	41.27
47	---	---	---	---	---	---	---	12.98	15.96	19.89	24.76	28.26	32.20	41.53
48	---	---	---	---	---	---	---	13.03	16.04	20.02	24.89	28.43	32.39	41.78
49	---	---	---	---	---	---	---	13.08	16.13	20.12	25.02	28.58	32.57	42.04
50	---	---	---	---	---	---	---	13.14	16.19	20.21	25.15	28.73	32.75	42.28
51	---	---	---	---	---	---	---	13.22	16.29	20.33	25.28	28.88	32.93	42.52
52	---	---	---	---	---	---	---	13.27	16.37	20.43	25.39	29.03	33.10	42.74
53	---	---	---	---	---	---	---	13.35	16.43	20.50	25.51	29.17	33.27	42.97
54	---	---	---	---	---	---	---	13.40	16.54	20.62	25.62	29.30	33.42	43.18
55	---	---	---	---	---	---	---	13.45	16.57	20.72	25.74	29.43	33.58	43.41
56	---	---	---	---	---	---	---	13.53	16.69	20.81	25.85	29.57	33.73	43.61
57	---	---	---	---	---	---	---	13.59	16.75	20.91	25.95	29.69	33.88	43.82
58	---	---	---	---	---	---	---	13.64	16.82	20.99	26.06	29.81	34.02	44.01
59	---	---	---	---	---	---	---	13.71	16.89	21.09	26.16	29.94	34.17	44.21
60	---	---	---	---	---	---	---	13.77	16.96	21.19	26.26	30.05	34.31	44.39
61	---	---	---	---	---	---	---	13.85	17.06	21.26	26.35	30.17	34.44	44.58
62	---	---	---	---	---	---	---	13.90	17.11	21.35	26.45	30.27	34.57	44.75
63	---	---	---	---	---	---	---	13.94	17.19	21.44	26.54	30.39	34.70	44.92
64	---	---	---	---	---	---	---	13.99	17.24	21.51	26.63	30.49	34.83	45.09
65	---	---	---	---	---	---	---	14.05	17.32	21.60	26.72	30.60	34.95	45.26
66	---	---	---	---	---	---	---	14.13	17.39	21.67	26.80	30.69	35.07	45.43
67	---	---	---	---	---	---	---	14.19	17.46	21.76	26.89	30.80	35.18	45.59
68	---	---	---	---	---	---	---	14.23	17.52	21.85	26.97	30.89	35.30	45.73
69	---	---	---	---	---	---	---	14.28	17.57	21.92	27.05	30.99	35.41	45.89
70	---	---	---	---	---	---	---	14.35	17.66	22.00	27.12	31.08	35.52	46.04
Oversized	---	---	---	---	---	---	---	43.95	49.25	57.04	69.40	83.99	97.82	127.24

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rate.
5. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Discount Parcels: Parcel Post (Inter-BMC/ASF—OBMC Presort)

Parcel Post (Inter-BMC/ASF—OBMC Presort)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]							Nonmachinable[1, 2, 3, 5, 6]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$2.66	$2.72	$2.72	$2.72	$2.72	$2.72	$2.72	$5.56	$5.62	$5.62	$5.62	$5.62	$5.62	$5.62
2	2.83	2.83	3.13	3.13	3.50	3.50	3.50	5.73	5.73	6.03	6.03	6.40	6.40	6.40
3	3.67	3.67	4.62	4.73	4.79	4.85	5.43	6.57	6.57	7.52	7.63	7.69	7.75	8.33
4	3.89	4.25	5.40	6.07	6.30	6.36	7.06	6.79	7.15	8.30	8.97	9.20	9.26	9.96
5	4.07	4.79	6.08	6.94	7.81	7.88	8.71	6.97	7.69	8.98	9.84	10.71	10.78	11.61
6	4.70	5.10	6.61	7.73	8.80	9.20	10.88	7.60	8.00	9.51	10.63	11.70	12.10	13.78
7	4.88	5.39	7.11	8.47	9.68	10.78	12.29	7.78	8.29	10.01	11.37	12.58	13.68	15.19
8	5.07	5.65	7.52	9.14	10.48	11.99	14.62	7.97	8.55	10.42	12.04	13.38	14.89	17.52
9	5.21	5.90	7.98	9.78	11.24	12.87	16.73	8.11	8.80	10.88	12.68	14.14	15.77	19.63
10	5.39	6.75	8.36	10.37	11.95	13.71	17.89	8.29	9.65	11.26	13.27	14.85	16.61	20.79
11	5.53	6.99	8.75	10.93	12.61	14.50	18.95	8.43	9.89	11.65	13.83	15.51	17.40	21.85
12	5.66	7.21	9.10	11.46	13.23	15.23	19.96	8.56	10.11	12.00	14.36	16.13	18.13	22.86
13	5.80	7.40	9.44	11.96	13.82	15.92	20.89	8.70	10.30	12.34	14.86	16.72	18.82	23.79
14	5.94	7.64	9.76	12.42	14.38	16.58	21.79	8.84	10.54	12.66	15.32	17.28	19.48	24.69
15	6.06	7.84	10.08	12.87	14.91	17.20	22.63	8.96	10.74	12.98	15.77	17.81	20.10	25.53
16	6.17	8.03	10.36	13.29	15.41	17.79	23.44	9.07	10.93	13.26	16.19	18.31	20.69	26.34
17	6.31	8.19	10.66	13.69	15.89	18.36	24.20	9.21	11.09	13.56	16.59	18.79	21.26	27.10
18	6.41	8.37	10.91	14.07	16.35	18.89	24.93	9.31	11.27	13.81	16.97	19.25	21.79	27.83
19	6.54	8.55	11.18	14.44	16.78	19.41	25.63	9.44	11.45	14.08	17.34	19.68	22.31	28.53
20	6.63	8.71	11.40	14.79	17.19	19.90	26.30	9.53	11.61	14.30	17.69	20.09	22.80	29.20
21	6.75	8.88	11.63	15.13	17.59	20.37	26.93	9.65	11.78	14.53	18.03	20.49	23.27	29.83
22	6.84	9.01	11.86	15.44	17.97	20.82	27.54	9.74	11.91	14.76	18.34	20.87	23.72	30.44
23	6.95	9.19	12.10	15.75	18.34	21.24	28.12	9.85	12.09	15.00	18.65	21.24	24.14	31.02
24	7.02	9.32	12.29	16.05	18.69	21.66	28.69	9.92	12.22	15.19	18.95	21.59	24.56	31.59
25	7.13	9.46	12.50	16.33	19.03	22.05	29.23	10.03	12.36	15.40	19.23	21.93	24.95	32.13
26	7.21	9.59	12.69	16.60	19.35	22.44	29.75	10.11	12.49	15.59	19.50	22.25	25.34	32.65
27	7.32	9.73	12.87	16.87	19.67	22.81	30.25	10.22	12.63	15.77	19.77	22.57	25.71	33.15
28	7.39	9.86	13.08	17.12	19.97	23.16	30.73	10.29	12.76	15.98	20.02	22.87	26.06	33.63
29	7.49	10.00	13.26	17.36	20.26	23.51	31.19	10.39	12.90	16.16	20.26	23.16	26.41	34.09
30	7.57	10.11	13.42	17.60	20.54	23.83	31.64	10.47	13.01	16.32	20.50	23.44	26.73	34.54
31	7.67	10.22	13.59	17.83	20.81	24.15	32.08	10.57	13.12	16.49	20.73	23.71	27.05	34.98
32	7.73	10.35	13.76	18.05	21.07	24.46	32.50	10.63	13.25	16.66	20.95	23.97	27.36	35.40
33	7.81	10.47	13.93	18.26	21.33	24.75	32.90	10.71	13.37	16.83	21.16	24.23	27.65	35.80
34	7.90	10.55	14.06	18.47	21.57	25.05	33.29	10.80	13.45	16.96	21.37	24.47	27.95	36.19
35	7.98	10.68	14.22	18.67	21.80	25.32	33.67	10.88	13.58	17.12	21.57	24.70	28.22	36.57

1. For parcels that destinate to different BMC service areas (see 453.3.1).
2. All rates include an OBMC Presort discount of $1.23 per parcel.
3. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
4. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
5. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rate.
6. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF—OBMC Presort)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 3, 5, 6] Zone 1 & 2	3	4	5	6	7	8
36	For parcels over 35 pounds, use nonmachinable rates.							$10.95	$13.68	$17.29	$21.76	$24.93	$28.49	$36.93
37	---	---	---	---	---	---	---	11.02	13.77	17.41	21.94	25.15	28.75	37.28
38	---	---	---	---	---	---	---	11.09	13.90	17.55	22.13	25.36	29.00	37.63
39	---	---	---	---	---	---	---	11.18	13.97	17.68	22.30	25.57	29.25	37.96
40	---	---	---	---	---	---	---	11.25	14.09	17.82	22.47	25.77	29.49	38.29
41	---	---	---	---	---	---	---	11.34	14.19	17.94	22.63	25.98	29.72	38.60
42	---	---	---	---	---	---	---	11.40	14.28	18.07	22.79	26.16	29.94	38.91
43	---	---	---	---	---	---	---	11.45	14.37	18.20	22.95	26.34	30.16	39.20
44	---	---	---	---	---	---	---	11.52	14.44	18.31	23.10	26.52	30.37	39.49
45	---	---	---	---	---	---	---	11.59	14.55	18.44	23.25	26.70	30.58	39.76
46	---	---	---	---	---	---	---	11.66	14.63	18.56	23.39	26.87	30.78	40.04
47	---	---	---	---	---	---	---	11.75	14.73	18.66	23.53	27.03	30.97	40.30
48	---	---	---	---	---	---	---	11.80	14.81	18.79	23.66	27.20	31.16	40.55
49	---	---	---	---	---	---	---	11.85	14.90	18.89	23.79	27.35	31.34	40.81
50	---	---	---	---	---	---	---	11.91	14.96	18.98	23.92	27.50	31.52	41.05
51	---	---	---	---	---	---	---	11.99	15.06	19.10	24.05	27.65	31.70	41.29
52	---	---	---	---	---	---	---	12.04	15.14	19.20	24.16	27.80	31.87	41.51
53	---	---	---	---	---	---	---	12.12	15.20	19.27	24.28	27.94	32.04	41.74
54	---	---	---	---	---	---	---	12.17	15.31	19.39	24.39	28.07	32.19	41.95
55	---	---	---	---	---	---	---	12.22	15.34	19.49	24.51	28.20	32.35	42.18
56	---	---	---	---	---	---	---	12.30	15.46	19.58	24.62	28.34	32.50	42.38
57	---	---	---	---	---	---	---	12.36	15.52	19.68	24.72	28.46	32.65	42.59
58	---	---	---	---	---	---	---	12.41	15.59	19.76	24.83	28.58	32.79	42.78
59	---	---	---	---	---	---	---	12.48	15.66	19.86	24.93	28.71	32.94	42.98
60	---	---	---	---	---	---	---	12.54	15.73	19.96	25.03	28.82	33.08	43.16
61	---	---	---	---	---	---	---	12.62	15.83	20.03	25.12	28.94	33.21	43.35
62	---	---	---	---	---	---	---	12.67	15.88	20.12	25.22	29.04	33.34	43.52
63	---	---	---	---	---	---	---	12.71	15.96	20.21	25.31	29.16	33.47	43.69
64	---	---	---	---	---	---	---	12.76	16.01	20.28	25.40	29.26	33.60	43.86
65	---	---	---	---	---	---	---	12.82	16.09	20.37	25.49	29.37	33.72	44.03
66	---	---	---	---	---	---	---	12.90	16.16	20.44	25.57	29.46	33.84	44.20
67	---	---	---	---	---	---	---	12.96	16.23	20.53	25.66	29.57	33.95	44.36
68	---	---	---	---	---	---	---	13.00	16.29	20.62	25.74	29.66	34.07	44.50
69	---	---	---	---	---	---	---	13.05	16.34	20.69	25.82	29.76	34.18	44.66
70	---	---	---	---	---	---	---	13.12	16.43	20.77	25.89	29.85	34.29	44.81
Oversized	---	---	---	---	---	---	---	42.72	48.02	55.81	68.17	82.76	96.59	126.01

1. For parcels that destinate to different BMC service areas (see 453.3.1).
2. All rates include an OBMC Presort discount of $1.23 per parcel.
3. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
4. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
5. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rate.
6. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Discount Parcels: Parcel Post (Inter-BMC/ASF—BMC Presort)

Parcel Post (Inter-BMC/ASF—BMC Presort)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 5]							Nonmachinable[1, 2, 3, 5, 6]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$3.59	$3.65	$3.65	$3.65	$3.65	$3.65	$3.65	$6.49	$6.55	$6.55	$6.55	$6.55	$6.55	$6.55
2	3.76	3.76	4.06	4.06	4.43	4.43	4.43	6.66	6.66	6.96	6.96	7.33	7.33	7.33
3	4.60	4.60	5.55	5.66	5.72	5.78	6.36	7.50	7.50	8.45	8.56	8.62	8.68	9.26
4	4.82	5.18	6.33	7.00	7.23	7.29	7.99	7.72	8.08	9.23	9.90	10.13	10.19	10.89
5	5.00	5.72	7.01	7.87	8.74	8.81	9.64	7.90	8.62	9.91	10.77	11.64	11.71	12.54
6	5.63	6.03	7.54	8.66	9.73	10.13	11.81	8.53	8.93	10.44	11.56	12.63	13.03	14.71
7	5.81	6.32	8.04	9.40	10.61	11.71	13.22	8.71	9.22	10.94	12.30	13.51	14.61	16.12
8	6.00	6.58	8.45	10.07	11.41	12.92	15.55	8.90	9.48	11.35	12.97	14.31	15.82	18.45
9	6.14	6.83	8.91	10.71	12.17	13.80	17.66	9.04	9.73	11.81	13.61	15.07	16.70	20.56
10	6.32	7.68	9.29	11.30	12.88	14.64	18.82	9.22	10.58	12.19	14.20	15.78	17.54	21.72
11	6.46	7.92	9.68	11.86	13.54	15.43	19.88	9.36	10.82	12.58	14.76	16.44	18.33	22.78
12	6.59	8.14	10.03	12.39	14.16	16.16	20.89	9.49	11.04	12.93	15.29	17.06	19.06	23.79
13	6.73	8.33	10.37	12.89	14.75	16.85	21.82	9.63	11.23	13.27	15.79	17.65	19.75	24.72
14	6.87	8.57	10.69	13.35	15.31	17.51	22.72	9.77	11.47	13.59	16.25	18.21	20.41	25.62
15	6.99	8.77	11.01	13.80	15.84	18.13	23.56	9.89	11.67	13.91	16.70	18.74	21.03	26.46
16	7.10	8.96	11.29	14.22	16.34	18.72	24.37	10.00	11.86	14.19	17.12	19.24	21.62	27.27
17	7.24	9.12	11.59	14.62	16.82	19.29	25.13	10.14	12.02	14.49	17.52	19.72	22.19	28.03
18	7.34	9.30	11.84	15.00	17.28	19.82	25.86	10.24	12.20	14.74	17.90	20.18	22.72	28.76
19	7.47	9.48	12.11	15.37	17.71	20.34	26.56	10.37	12.38	15.01	18.27	20.61	23.24	29.46
20	7.56	9.64	12.33	15.72	18.12	20.83	27.23	10.46	12.54	15.23	18.62	21.02	23.73	30.13
21	7.68	9.81	12.56	16.06	18.52	21.30	27.86	10.58	12.71	15.46	18.96	21.42	24.20	30.76
22	7.77	9.94	12.79	16.37	18.90	21.75	28.47	10.67	12.84	15.69	19.27	21.80	24.65	31.37
23	7.88	10.12	13.03	16.68	19.27	22.17	29.05	10.78	13.02	15.93	19.58	22.17	25.07	31.95
24	7.95	10.25	13.22	16.98	19.62	22.59	29.62	10.85	13.15	16.12	19.88	22.52	25.49	32.52
25	8.06	10.39	13.43	17.26	19.96	22.98	30.16	10.96	13.29	16.33	20.16	22.86	25.88	33.06
26	8.14	10.52	13.62	17.53	20.28	23.37	30.68	11.04	13.42	16.52	20.43	23.18	26.27	33.58
27	8.25	10.66	13.80	17.80	20.60	23.74	31.18	11.15	13.56	16.70	20.70	23.50	26.64	34.08
28	8.32	10.79	14.01	18.05	20.90	24.09	31.66	11.22	13.69	16.91	20.95	23.80	26.99	34.56
29	8.42	10.93	14.19	18.29	21.19	24.44	32.12	11.32	13.83	17.09	21.19	24.09	27.34	35.02
30	8.50	11.04	14.35	18.53	21.47	24.76	32.57	11.40	13.94	17.25	21.43	24.37	27.66	35.47
31	8.60	11.15	14.52	18.76	21.74	25.08	33.01	11.50	14.05	17.42	21.66	24.64	27.98	35.91
32	8.66	11.28	14.69	18.98	22.00	25.39	33.43	11.56	14.18	17.59	21.88	24.90	28.29	36.33
33	8.74	11.40	14.86	19.19	22.26	25.68	33.83	11.64	14.30	17.76	22.09	25.16	28.58	36.73
34	8.83	11.48	14.99	19.40	22.50	25.98	34.22	11.73	14.38	17.89	22.30	25.40	28.88	37.12
35	8.91	11.61	15.15	19.60	22.73	26.25	34.60	11.81	14.51	18.05	22.50	25.63	29.15	37.50

1. For parcels that destinate to different BMC service areas (see 453.3.1).
2. All rates include a BMC Presort discount of $0.30 per parcel.
3. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
4. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
5. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rate.
6. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF—BMC Presort)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 5] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 3, 5, 6] Zone 1 & 2	3	4	5	6	7	8
36	For parcels over 35 pounds, use nonmachinable rates.							$11.88	$14.61	$18.22	$22.69	$25.86	$29.42	$37.86
37	---	---	---	---	---	---	---	11.95	14.70	18.34	22.87	26.08	29.68	38.21
38	---	---	---	---	---	---	---	12.02	14.83	18.48	23.06	26.29	29.93	38.56
39	---	---	---	---	---	---	---	12.11	14.90	18.61	23.23	26.50	30.18	38.89
40	---	---	---	---	---	---	---	12.18	15.02	18.75	23.40	26.70	30.42	39.22
41	---	---	---	---	---	---	---	12.27	15.12	18.87	23.56	26.91	30.65	39.53
42	---	---	---	---	---	---	---	12.33	15.21	19.00	23.72	27.09	30.87	39.84
43	---	---	---	---	---	---	---	12.38	15.30	19.13	23.88	27.27	31.09	40.13
44	---	---	---	---	---	---	---	12.45	15.37	19.24	24.03	27.45	31.30	40.42
45	---	---	---	---	---	---	---	12.52	15.48	19.37	24.18	27.63	31.51	40.69
46	---	---	---	---	---	---	---	12.59	15.56	19.49	24.32	27.80	31.71	40.97
47	---	---	---	---	---	---	---	12.68	15.66	19.59	24.46	27.96	31.90	41.23
48	---	---	---	---	---	---	---	12.73	15.74	19.72	24.59	28.13	32.09	41.48
49	---	---	---	---	---	---	---	12.78	15.83	19.82	24.72	28.28	32.27	41.74
50	---	---	---	---	---	---	---	12.84	15.89	19.91	24.85	28.43	32.45	41.98
51	---	---	---	---	---	---	---	12.92	15.99	20.03	24.98	28.58	32.63	42.22
52	---	---	---	---	---	---	---	12.97	16.07	20.13	25.09	28.73	32.80	42.44
53	---	---	---	---	---	---	---	13.05	16.13	20.20	25.21	28.87	32.97	42.67
54	---	---	---	---	---	---	---	13.10	16.24	20.32	25.32	29.00	33.12	42.88
55	---	---	---	---	---	---	---	13.15	16.27	20.42	25.44	29.13	33.28	43.11
56	---	---	---	---	---	---	---	13.23	16.39	20.51	25.55	29.27	33.43	43.31
57	---	---	---	---	---	---	---	13.29	16.45	20.61	25.65	29.39	33.58	43.52
58	---	---	---	---	---	---	---	13.34	16.52	20.69	25.76	29.51	33.72	43.71
59	---	---	---	---	---	---	---	13.41	16.59	20.79	25.86	29.64	33.87	43.91
60	---	---	---	---	---	---	---	13.47	16.66	20.89	25.96	29.75	34.01	44.09
61	---	---	---	---	---	---	---	13.55	16.76	20.96	26.05	29.87	34.14	44.28
62	---	---	---	---	---	---	---	13.60	16.81	21.05	26.15	29.97	34.27	44.45
63	---	---	---	---	---	---	---	13.64	16.89	21.14	26.24	30.09	34.40	44.62
64	---	---	---	---	---	---	---	13.69	16.94	21.21	26.33	30.19	34.53	44.79
65	---	---	---	---	---	---	---	13.75	17.02	21.30	26.42	30.30	34.65	44.96
66	---	---	---	---	---	---	---	13.83	17.09	21.37	26.50	30.39	34.77	45.13
67	---	---	---	---	---	---	---	13.89	17.16	21.46	26.59	30.50	34.88	45.29
68	---	---	---	---	---	---	---	13.93	17.22	21.55	26.67	30.59	35.00	45.43
69	---	---	---	---	---	---	---	13.98	17.27	21.62	26.75	30.69	35.11	45.59
70	---	---	---	---	---	---	---	14.05	17.36	21.70	26.82	30.78	35.22	45.74
Oversized	---	---	---	---	---	---	---	43.65	48.95	56.74	69.10	83.69	97.52	126.94

1. For parcels that destinate to different BMC service areas (see 453.3.1).
2. All rates include a BMC Presort discount of $0.30 per parcel.
3. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
4. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel (50-piece minimum).
5. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rate.
6. Rates include the $2.90 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Discount Parcels: Parcel Select

Parcel Select

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2]						Nonmachinable[1, 2]						
			DBMC/ASF Zone[3]					DSCF		DBMC/ASF Zone[5]			
	DDU	DSCF	1&2	3	4	5	DDU	3-Digit[4]	5-Digit	1&2	3	4	5
1	$1.30	$1.61	$2.12	$2.38	$2.62	$3.26	$1.30	$2.76	$1.61	$3.65	$3.91	$4.15	$4.79
2	1.35	1.80	2.36	2.91	3.36	3.89	1.35	2.95	1.80	3.89	4.44	4.89	5.42
3	1.40	1.95	2.62	3.45	4.05	4.51	1.40	3.10	1.95	4.15	4.98	5.58	6.04
4	1.45	2.10	2.87	3.95	4.65	5.07	1.45	3.25	2.10	4.40	5.48	6.18	6.60
5	1.51	2.23	3.10	4.43	5.08	5.59	1.51	3.38	2.23	4.63	5.96	6.61	7.12
6	1.55	2.36	3.32	4.85	5.44	6.06	1.55	3.51	2.36	4.85	6.38	6.97	7.59
7	1.59	2.48	3.52	5.23	5.77	6.51	1.59	3.63	2.48	5.05	6.76	7.30	8.04
8	1.63	2.58	3.72	5.61	6.07	6.91	1.63	3.73	2.58	5.25	7.14	7.60	8.44
9	1.67	2.70	3.91	5.94	6.38	7.28	1.67	3.85	2.70	5.44	7.47	7.91	8.81
10	1.71	2.79	4.09	6.29	7.07	7.63	1.71	3.94	2.79	5.62	7.82	8.60	9.16
11	1.74	2.89	4.26	6.61	7.34	7.95	1.74	4.04	2.89	5.79	8.14	8.87	9.48
12	1.77	2.98	4.43	6.91	7.61	8.26	1.77	4.13	2.98	5.96	8.44	9.14	9.79
13	1.80	3.08	4.58	7.17	7.86	8.54	1.80	4.23	3.08	6.11	8.70	9.39	10.07
14	1.83	3.16	4.74	7.29	8.13	8.80	1.83	4.31	3.16	6.27	8.82	9.66	10.33
15	1.87	3.27	4.89	7.46	8.35	9.04	1.87	4.42	3.27	6.42	8.99	9.88	10.57
16	1.89	3.36	5.03	7.63	8.57	9.29	1.89	4.51	3.36	6.56	9.16	10.10	10.82
17	1.92	3.46	5.18	7.79	8.80	9.50	1.92	4.61	3.46	6.71	9.32	10.33	11.03
18	1.95	3.54	5.30	7.95	8.99	9.71	1.95	4.69	3.54	6.83	9.48	10.52	11.24
19	1.97	3.64	5.44	8.09	9.19	9.91	1.97	4.79	3.64	6.97	9.62	10.72	11.44
20	1.99	3.72	5.57	8.24	9.36	10.08	1.99	4.87	3.72	7.10	9.77	10.89	11.61
21	2.02	3.80	5.69	8.39	9.51	10.26	2.02	4.95	3.80	7.22	9.92	11.04	11.79
22	2.04	3.88	5.81	8.52	9.67	10.42	2.04	5.03	3.88	7.34	10.05	11.20	11.95
23	2.07	3.96	5.92	8.67	9.81	10.59	2.07	5.11	3.96	7.45	10.20	11.34	12.12
24	2.09	4.04	6.04	8.79	9.94	10.73	2.09	5.19	4.04	7.57	10.32	11.47	12.26
25	2.11	4.11	6.16	8.92	10.07	10.88	2.11	5.26	4.11	7.69	10.45	11.60	12.41
26	2.13	4.18	6.26	9.02	10.19	11.01	2.13	5.33	4.18	7.79	10.55	11.72	12.54
27	2.15	4.26	6.38	9.16	10.31	11.14	2.15	5.41	4.26	7.91	10.69	11.84	12.67
28	2.17	4.33	6.47	9.29	10.41	11.26	2.17	5.48	4.33	8.00	10.82	11.94	12.79
29	2.18	4.40	6.58	9.40	10.54	11.37	2.18	5.55	4.40	8.11	10.93	12.07	12.90
30	2.20	4.47	6.68	9.51	10.63	11.49	2.20	5.62	4.47	8.21	11.04	12.16	13.02
31	2.21	4.53	6.78	9.59	10.72	11.60	2.21	5.68	4.53	8.31	11.12	12.25	13.13
32	2.22	4.60	6.87	9.71	10.82	11.71	2.22	5.75	4.60	8.40	11.24	12.35	13.24
33	2.23	4.66	6.97	9.80	10.92	11.79	2.23	5.81	4.66	8.50	11.33	12.45	13.32
34	2.25	4.72	7.06	9.90	10.99	11.89	2.25	5.87	4.72	8.59	11.43	12.52	13.42
35	2.26	4.79	7.15	10.00	11.09	11.98	2.26	5.94	4.79	8.68	11.53	12.62	13.51

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rate.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel.
4. Rates include the $1.15 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
5. Rates include the $1.53 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Select
DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2]						Nonmachinable[1, 2]						
			DBMC/ASF Zone[3]					DSCF		DBMC/ASF Zone[5]			
	DDU	DSCF	1&2	3	4	5	DDU	3-Digit[4]	5-Digit	1&2	3	4	5
36	For parcels over 35 pounds, use nonmachinable rates.						$2.27	$5.99	$4.84	$8.77	$12.01	$12.70	$13.60
37	---	---	---	---	---	---	2.28	6.05	4.90	8.86	12.10	12.77	13.68
38	---	---	---	---	---	---	2.29	6.10	4.95	8.94	12.20	12.85	13.76
39	---	---	---	---	---	---	2.30	6.17	5.02	9.02	12.29	12.91	13.84
40	---	---	---	---	---	---	2.31	6.22	5.07	9.11	12.38	12.98	13.90
41	---	---	---	---	---	---	2.32	6.27	5.12	9.19	12.49	13.04	13.97
42	---	---	---	---	---	---	2.33	6.33	5.18	9.27	12.57	13.11	14.04
43	---	---	---	---	---	---	2.34	6.38	5.23	9.35	12.66	13.18	14.35
44	---	---	---	---	---	---	2.35	6.43	5.28	9.42	12.73	13.24	14.65
45	---	---	---	---	---	---	2.36	6.48	5.33	9.50	12.80	13.40	14.98
46	---	---	---	---	---	---	2.37	6.54	5.39	9.57	12.90	13.45	15.30
47	---	---	---	---	---	---	2.38	6.59	5.44	9.65	12.97	13.50	15.62
48	---	---	---	---	---	---	2.39	6.63	5.48	9.72	13.06	13.56	15.96
49	---	---	---	---	---	---	2.40	6.68	5.53	9.79	13.13	13.61	16.30
50	---	---	---	---	---	---	2.41	6.73	5.58	9.87	13.21	13.65	16.65
51	---	---	---	---	---	---	2.42	6.78	5.63	9.93	13.28	13.70	17.00
52	---	---	---	---	---	---	2.43	6.82	5.67	10.00	13.37	13.75	17.36
53	---	---	---	---	---	---	2.45	6.86	5.71	10.07	13.42	13.79	17.74
54	---	---	---	---	---	---	2.46	6.90	5.75	10.13	13.47	13.84	18.12
55	---	---	---	---	---	---	2.47	6.96	5.81	10.20	13.51	13.89	18.28
56	---	---	---	---	---	---	2.48	7.00	5.85	10.27	13.55	13.91	18.35
57	---	---	---	---	---	---	2.49	7.04	5.89	10.33	13.58	13.95	18.46
58	---	---	---	---	---	---	2.50	7.08	5.93	10.39	13.62	13.99	18.54
59	---	---	---	---	---	---	2.51	7.13	5.98	10.46	13.65	14.02	18.62
60	---	---	---	---	---	---	2.52	7.17	6.02	10.51	13.68	14.05	18.71
61	---	---	---	---	---	---	2.53	7.20	6.05	10.57	13.71	14.09	18.79
62	---	---	---	---	---	---	2.54	7.24	6.09	10.64	13.75	14.16	18.86
63	---	---	---	---	---	---	2.55	7.28	6.13	10.69	13.77	14.23	18.94
64	---	---	---	---	---	---	2.56	7.33	6.18	10.75	13.80	14.28	19.02
65	---	---	---	---	---	---	2.57	7.36	6.21	10.81	13.83	14.35	19.08
66	---	---	---	---	---	---	2.58	7.40	6.25	10.87	13.86	14.43	19.17
67	---	---	---	---	---	---	2.59	7.44	6.29	10.92	13.88	14.48	19.23
68	---	---	---	---	---	---	2.60	7.47	6.32	10.97	13.89	14.54	19.30
69	---	---	---	---	---	---	2.61	7.52	6.37	11.03	13.91	14.60	19.37
70	---	---	---	---	---	---	2.62	7.55	6.40	11.08	13.94	14.67	19.44
Oversized	---	---	---	---	---	---	7.36	12.60	12.60	19.12	25.64	34.58	35.94

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 15 pounds, use 15-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rate.
3. Machinable parcels may be eligible for barcoded discount of $0.03 per parcel.
4. Rates include the $1.15 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
5. Rates include the $1.53 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Periodicals

Ride-Along Rate—per ride-along piece: $0.131

Outside-County—Excluding Science-of-Agriculture

POUND RATES
(Per pound or fraction)

Advertising portion:

LETTERS, FLATS & PARCELS	
Zone	**Rate**
DDU	$0.167
DSCF	0.214
DADC	0.235
1&2	0.261
3	0.281
4	0.332
5	0.410
6	0.491
7	0.589
8	0.672

Nonadvertising portion: $0.203

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS & PARCELS
Presort Level	**Automation [1]**	**Automation [1]**	**Nonautomation**
Basic	$0.296	$0.343	$0.393
3-Digit	0.262	0.298	0.341
5-Digit	0.206	0.238	0.270
Carrier Route			
Basic	---	---	0.172
High Density	---	---	0.138
Saturation	---	---	0.118

1. Lower maximum weight applies: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces (AFSM 100) and 6 pounds (UFSM 1000).

Discounts for each eligible addressed piece:
- Nonadvertising adjustment for each 1% of nonadvertising content: $0.00078.
- Destination delivery unit (DDU): $0.019.
- Destination SCF (DSCF): $0.008.
- Destination ADC (DADC): $0.002.
- Destination entry pallet: $0.016.
- Pallet (other than destination entry pallet): $0.005.

Preferred Rate Discount: Authorized nonprofit and classroom mailers receive a discount of 5% off the total Outside-County postage excluding the postage for advertising pounds. The 5% discount does not apply to commingled nonsubscriber copies in excess of the 10% allowance provided under 707.7.0.

Outside-County—Science-of-Agriculture

POUND RATES
(Per pound or fraction)

Advertising portion:

LETTERS, FLATS & PARCELS	
Zone	**Rate**
DDU	$0.125
DSCF	0.160
DADC	0.176
1&2	0.196
3	0.281
4	0.332
5	0.410
6	0.491
7	0.589
8	0.672

Nonadvertising portion: $0.203

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS & PARCELS
Presort Level	**Automation [1]**	**Automation [1]**	**Nonautomation**
Basic	$0.296	$0.343	$0.393
3-Digit	0.262	0.298	0.341
5-Digit	0.206	0.238	0.270
Carrier Route			
Basic	---	---	0.172
High Density	---	---	0.138
Saturation	---	---	0.118

1. Lower maximum weight applies: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces (AFSM 100) and 6 pounds (UFSM 1000).

Discounts for each eligible addressed piece:
- Nonadvertising adjustment for each 1% of nonadvertising content: $0.00078.
- Destination delivery unit (DDU): $0.019.
- Destination SCF (DSCF): $0.008.
- Destination ADC (DADC): $0.002.
- Destination entry pallet: $0.016.
- Pallet (other than destination entry pallet): $0.005.

Periodicals

In-County

POUND RATES
(Per pound or fraction)

LETTERS, FLATS & PARCELS	
Zone	**Rate**
DDU	$0.109
None	0.142

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS & PARCELS
Presort Level	**Automation [1]**	**Automation [1]**	**Nonautomation**
Basic	$0.049	$0.075	$0.103
3-Digit	0.047	0.071	0.095
5-Digit	0.045	0.065	0.085
Carrier Route			
Basic	---	---	0.049
High Density	---	---	0.033
Saturation	---	---	0.027

1. Lower maximum weight applies: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces (AFSM 100) and 6 pounds (UFSM 1000).

Destination delivery unit (DDU) discount for each addressed piece: $0.006.

Extra Services

CERTIFICATE OF MAILING

Individual Pieces	Fee
Individual article listing, per article (Form 3817)	$0.95
Duplicate copies of Form 3817 or mailing bill, per page	0.95
Firm mailing books (Form 3877), per piece listed (minimum 3)	0.30
Bulk Quantities	**Fee**
For first 1,000 pieces (or fraction thereof)	$4.75
Each additional 1,000 pieces (or fraction thereof)	0.55
Duplicate copy of Form 3606	0.95

CERTIFIED MAIL Fee—$2.40

COLLECT ON DELIVERY (COD)

Amount to be collected or insurance coverage desired, whichever is higher [1]	Fee
$0.00 to $50	$4.75
50.01 to 100	5.80
100.01 to 200	6.85
200.01 to 300	7.90
300.01 to 400	8.95
400.01 to 500	10.00
500.01 to 600	11.05
600.01 to 700	12.10
700.01 to 800	13.15
800.01 to 900	14.20
900.01 to 1,000	15.25
Additional COD Services	**Fee**
Restricted delivery [2]	$3.70
Notice of nondelivery	3.15
Alteration of COD charges or designation of new addressee	3.15
Registered COD [3]	4.20

1. For Express Mail COD shipments valued at $100 or less, the COD fee charged is based on the amount to be collected. Express Mail insurance automatically provides up to $100 merchandise insurance.
2. Not available with Express Mail COD.
3. Regardless of amount to be collected or insurance value.

CONFIRM

Subscription Level	Subscription Fee and Term	Additional ID Code Fee and Term	Additional Scans Fee and Number
Silver	$2,000 3 months	$500 each 3 months	$500 block of 2 million scans
Gold	$4,500 12 months	$500 each 3 months	$750 block of 6 million scans
Platinum	$10,000 12 months	$500 each 3 months	NA

CONFIRMATION SERVICES

Delivery Confirmation		Fee
First-Class Mail (parcels only)	Retail	$0.60
	Electronic	0.14
Priority Mail	Retail	0.50
	Electronic	0.00
Package Services (parcels only) [1]	Retail	0.60
	Electronic	0.14
Standard Mail [2]	Electronic	0.14

1. No charge for Parcel Select electronic option.
2. Available only for pieces subject to the residual shape surcharge.

Signature Confirmation		Fee
First-Class Mail (parcels only)	Retail	$1.90
	Electronic	1.35
Priority Mail	Retail	1.90
	Electronic	1.35
Package Services (parcels only) [1]	Retail	1.90
	Electronic	1.35

1. No charge for Parcel Select electronic option.

INSURANCE

Express Mail Insurance (Amount for Merchandise Insurance Coverage Desired)	Fee [1]
$0.01 to $100.00	$0.00
100.01 to 5,000.00	$1.05 per $100 or fraction thereof over $100 in desired coverage

1. Express Mail merchandise maximum coverage: $5,000.00. Document reconstruction maximum liability: $100.00.

Insurance (Amount for Merchandise Insurance Coverage Desired)	Fee [1]
$0.01 to $50	$1.35
50.01 to 100	2.30
100.01 to 200	3.35
200.01 to 300	4.40
300.01 to 400	5.45
400.01 to 500	6.50
500.01 to 600	7.55
600.01 to 5,000 (maximum liability is $5000)	$7.55 plus $1.05 per $100 or fraction thereof over $600 in desired coverage.

1. Bulk insurance discount $0.01 to $50.00: $0.60 per piece. (See 503.4.4 for eligibility.)
Bulk insurance discount $50.01 to $5,000.00: $0.80 per piece. (See 503.4.4 for eligibility.)

Extra Services

METER SERVICE — ON-SITE

Service	Fee
Meter service (per employee, per visit)	$37.00
Meters reset or examined (per meter)	5.25
Checking meters in/out of service (per meter, except for secured postage meters)	4.25

REGISTERED MAIL

Declared Value	Fee (in addition to postage)
$0.00	$7.90
0.01 to 100	8.45
100.01 to 500	9.35
500.01 to 1,000	10.25
1,000.01 to 2,000	11.15
2,000.01 to 3,000	12.05
3,000.01 to 4,000	12.95
4,000.01 to 5,000	13.85
5,000.01 to 6,000	14.75
6,000.01 to 7,000	15.65
7,000.01 to 8,000	16.55
8,000.01 to 9,000	17.45
9,000.01 to 10,000	18.35
10,000.01 to 11,000	19.25
11,000.01 to 12,000	20.15
12,000.01 to 13,000	21.05
13,000.01 to 14,000	21.95
14,000.01 to 15,000	22.85
15,000.01 to 16,000	23.75
16,000.01 to 17,000	24.65
17,000.01 to 18,000	25.55
18,000.01 to 19,000	26.45
19,000.01 to 20,000	27.35
20,000.01 to 21,000	28.25
21,000.01 to 22,000	29.15
22,000.01 to 23,000	30.05
23,000.01 to 24,000	30.95
24,000.01 to 25,000	31.85

Declared Value	Fee (in addition to postage) [1]
$25,000.01 to $1,000,000	$31.85 + handling charge of $0.90 per each $1,000 or fraction thereof over first $25,000
$1,000,000.01 to $15,000,000	$909.35 + handling charge of $0.90 per each $1,000 or fraction thereof over first $1,000,000
Over $15,000,000	$13,509.35 + amount determined by USPS based on weight, space, & value

Additional Services	Fee (in addition to postage)
COD Collection Charge (maximum amount collectible is $1000)	$4.20
Restricted Delivery	3.70
Return Receipts, requested at time of mailing showing to whom, signature, date of delivery, and addressee's address (if different)	1.85
Return Receipts, requested after mailing showing only to whom and date delivered	3.45

1. Fees for articles valued over $25,000 are for handling only. Maximum amount of insurance coverage available is $25,000.

RESTRICTED DELIVERY
Fee, per item, in addition to postage and other fees—$3.70

RETURN RECEIPT FOR MERCHANDISE (FORM 3804)
Requested at time of mailing—$3.15

SPECIAL HANDLING

Weight	Fee
Not more than 10 pounds	$6.25
More than 10 pounds	8.70

RETURN RECEIPT

Return Receipt (Form 3811 in conjunction with another service)	Fee
Requested at time of mailing (receive by mail)	$1.85
Requested at time of mailing (receive electronically)	1.35
Requested after mailing (Form 3811A) (receive by fax, mail, e-mail)	3.45

Recipient Services

CALLER SERVICE

For each separation provided, per semiannual period—$434.00
For each reserved call number, per calendar year—$34.00

POST OFFICE BOX SERVICE

Fee Group	Box Size and Fee per Semiannual (6-month) Period 1	2	3	4	5
1	$37.00	$53.00	$105.00	$216.00	$348.00
2	31.00	47.00	84.00	179.00	332.00
3	25.00	40.00	72.00	124.00	220.00
4	20.00	36.00	66.00	116.00	184.00
5	14.00	23.00	36.00	69.00	132.00
6	13.00	19.00	35.00	63.00	102.00
7	9.00	14.00	24.00	42.00	74.00
E[1]	0	0	0	0	0

Additional Fees and Services	
Deposit per key issued	$1.00
Key duplication or replacement (after first 2 keys), each	4.65
Post office box lock replacement, each	11.60

1. A customer ineligible for carrier delivery may obtain one post office box at the Group E fee, subject to administrative decisions regarding the customer's proximity to post office.

Mailer Services

ADDRESS CORRECTION SERVICE

Per notice issued: manual—$0.75
Per notice issued: electronic—$0.21

ADDRESS SEQUENCING SERVICE

Per card included by the mailer that was removed by the USPS for an incorrect or undeliverable address—$0.30

BULK PARCEL RETURN SERVICE

Annual permit fee—$160.00
Annual accounting fee—$500.00
Per piece returned, regardless of weight—$1.90

MERCHANDISE RETURN SERVICE

Annual permit fee—$160.00
Annual accounting fee (for advance deposit account)—$500.00

PICKUP SERVICE FEE

For Express Mail, Priority Mail, & Parcel Post:
Per occurrence—$13.25

SHIPPER PAID FORWARDING

Annual Accounting Fee—$500.00

BUSINESS REPLY MAIL

Business Reply Mail (BRM)[1]	High Volume	Basic
Annual permit fee	$160.00	$160.00
Annual accounting fee	500.00	None
1-ounce Letter Rate + per piece[2]	0.39 + 0.11	0.39 + 0.65
Card Rate + per piece	0.24 + 0.11	0.24 + 0.65
Qualified Business Reply Mail (QBRM)	**High Volume**	**Basic**
Annual permit fee	$160.00	$160.00
Annual accounting fee	500.00	500.00
Quarterly Fee	1900.00	None
1-ounce Letter Rate + per piece[3]	0.358 + 0.008	0.358 + 0.06
Card Rate + per piece	0.211 + 0.008	0.211 + 0.06

1. For nonletter-size BRM, see 507.8.0.
2. $0.24 each additional ounce; apply Priority Mail rates for pieces over 13 ounces.
3. Second ounce or fraction—$0.24.

MAILING LIST SERVICE

Service		Fee
For correction of name and address on occupant lists	per name on list	$0.30
	Minimum per list (30 items)	9.00
For sortation of mailing lists on cards by 5-digit ZIP Code	per 1,000 addresses or fraction	105.00
For address changes provided to election boards and voter registration commissions	per Form 3575	0.28

Other Fees and Charges

ANNUAL MAILING FEES (per 12-month period)
First-Class Presort, per office of mailing—$160.00
Standard Mail—$160.00
Parcel Select—$160.00
Presorted Media Mail—$160.00
Presorted Library Mail—$160.00
Bound Printed Matter: destination entry—$160.00

PARCEL AIRLIFT (PAL)
Weight not more than 2 pounds—$0.45
Weight not more than 3 pounds—$0.90
Weight not more than 4 pounds—$1.30
Weight not more than 30 pounds—$1.80

PERIODICALS APPLICATION FEES
Original entry—$395.00
Additional entry—$65.00
Reentry—$45.00
Registration for news agents—$40.00

PERMIT IMPRINT
Application fee—$160.00

MONEY ORDERS

Service	Fee
Domestic money order, $0.01 to $500	$0.95
Domestic money order, $500.01 to $1000	1.30
Postal military money order (issued by military facilities)	0.25
Inquiry fee (includes the issuance of a copy of a paid money order)	3.15
Maximum amount per money order—$1000	

SURCHARGES

First-Class Mail		Fee
Nonmachinable Pieces	Retail	$0.13
	Discount	0.058
Standard Mail		**Fee**
Residual Shape Surcharge	Presorted	$0.242
	Enhanced Carrier Route	0.211
Nonmachinable Letters	Regular	0.042
	Nonprofit	0.021

Postal Explorer

pe.usps.com

Rate Calculators

Use the Rate Calculators on the Postal Explorer website at pe.usps.com to calculate rates.

Domestic Rate Charts

Rates and Fees Reference is available as a PDF and HTML document at pe.usps.com.

Zone Charts

Access National Zone Charts at pe.usps.com.

[FR Doc. 05–23488 Filed 12–1–05; 8:45 am]
BILLING CODE 7710–12–C

Proposed Rules

Federal Register
Vol. 70, No. 231
Friday, December 2, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–05–07]

Soybean Promotion and Research Program; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service's (AMS) review of the Soybean Promotion and Research Program (conducted under the Soybean Promotion and Research Order), under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by January 31, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Kenneth R. Payne, Chief, Marketing Programs, Livestock and Seed Program, AMS, USDA, Room 2638–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Fax: (202) 720–1125; or via e-mail at *soybeancomments@usda.gov*. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-soy.htm* or during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program, AMS, USDA; STOP–0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: The Soybean Promotion and Research Order (Order) (7 CFR 1220) is authorized under the Soybean Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 6301 *et seq.*). This program is a national producer program for soybean and soybean product promotion, research, consumer information, and industry information as part of a comprehensive strategy to strengthen the soybean industry's position in the marketplace by maintaining and expanding existing domestic and foreign markets and uses for soybeans and soybean products, and to develop new markets and uses for soybean and soybean products. Soybean producers fund this program through a mandatory assessment of one-half of one percent (0.5 percent) of the net market price per bushel on soybeans marketed. Assessments collected under this program are used for promotion, research, consumer information, and industry information.

The national program is administered by the United Soybean Board (Board), which has 64 producer members. Board members serve 3-year terms and represent one of 30 geographic units. The Order became effective on July 9, 1991.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations.

On January 4, 2002, AMS published in the **Federal Register** (67 FR 525), an update to its plan to review regulations, including the Soybean Promotion and Research Program (conducted under the Soybean Promotion and Research Order), under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. Accordingly, this notice and request for comments is made for the Order.

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. AMS will consider the continued need for the Order; the nature of complaints or comments received from the public concerning the Order; the complexity of the Order; the extent to which the promotion Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local government rules; and the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Authority: 7 U.S.C. 6301–6311.

Dated: November 28, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E5–6786 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 2005N–0355]

RIN 0910–AF20

Revocation of Status of Specific Products; Group A Streptococcus; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the regulation applicable to the status of specific products; Group A streptococcus. FDA is proposing to remove the regulation because the existing requirement for Group A streptococcus organisms and derivatives is both obsolete and a perceived impediment to the development of Group A streptococcus vaccines. The regulation was written to apply to a group of products that are no longer on the market. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. We are taking this

action because the proposed change is noncontroversial, and we do not anticipate any significant adverse comments. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: Submit written or electronic comments on or before February 15, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0335 and/or RIN number 0910–AF20, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number or regulatory information number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any significant adverse comments and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion rule will also be considered as comments regarding the direct final rule. We are publishing the direct final rule because the rule is noncontroversial, and we do not anticipate that it will receive any significant adverse comments.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not subjects of a significant adverse comment.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document, before the effective date of the direct final rule, confirming that the direct final rule will go into effect on June 2, 2006. Additional information about direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

Section 610.19 *Status of specific products; Group A streptococcus* (21 CFR 610.19), was published in the **Federal Register** of January 5, 1979 (44 FR 1544). FDA issued that regulation after reviewing and considering the findings of the independent advisory Panel on Review of Bacterial Vaccines and Bacterial Antigens with ''No U.S. Standard of Potency'' (the Panel). The preamble to the proposed rule for § 610.19, which was published in the **Federal Register** of November 8, 1977 (42 FR 58266), contained the findings of the Panel, including the Panel's specific findings about then-licensed products that contained Group A streptococcus (42 FR 58266 at 58277 to 58278). The regulation was a part of the Panel's review of the safety, effectiveness, and labeling of biological products licensed before July 1, 1972. In 1972, the regulatory authority of these biological products was transferred from the National Institutes of Health (NIH) to FDA. The Panel reviewed those licensed biological bacterial products that were labeled, ''No U.S. Standard of Potency.'' (There was a separate review for the ''Bacterial Vaccines and Toxoids with Standards of Potency.'') Products considered by the Panel included primarily mixtures of bacterial preparations, e.g., Mixed Vaccine Respiratory, which was described as containing chemically killed organisms consisting of *Streptococcus* (*pyrogenes*, *viridans*, and *nonhemolytic*), *Staphylococcus* (*aureus* and *albus*), *Diplococcus pneumoniae*, *Neiserria catarrhalis*, *Klebsiella pneumoniae*, and *Haemophilus influenzae* manufactured by Hollister-Stier, Division of Cutter Laboratories (42 FR 58266 at 58268). Many of the products considered by the Panel were indicated as treatments for diverse ailments such as colds, asthma, arthritis, and uveitis (42 FR 58266 at 58270).

The Panel report listed a number of major concerns with this group of products (''No U.S. Standard of Potency'') (42 FR 58266 at 58269). One of the major concerns was that no defined standards of potency existed for any of the products, so it was not possible to establish that the microbial factors manufacturers claimed to be present in the products were indeed

there or in what concentration (42 FR 58266 at 58270). Many of these products were developed years before specific etiologic agents were associated with the cause of specific diseases. Moreover, the labeled indications for these products were for diseases of obscure etiology (Id.). Manufacturers could provide to the Panel neither clinical data to support the safety or efficacy of the products, nor any justification for using the products as described other than uncontrolled and unconfirmed clinical impressions (Id.). Additional safety questions arose from the fact that the products were administered repeatedly over extended periods of time with no evidence of systematic followup for the types of adverse effects that might be associated with repeated inoculations (Id.). The Panel stated in their report, that in view of what was known from laboratory studies about potential risks associated with repeated inoculations of foreign substances, they had reservations about the long-term safety of this group of products (42 FR 58266 at 58270 through 58271). In fact, the Panel did not classify any of these products into category I (those biological products determined to be safe, effective, and not misbranded) (42 FR 58266 at 58315).

In the Panel report, the section specifically concerning Group A streptococcal vaccines describes the history, dating back to the 1930s, of major attempts to immunize humans with hemolytic streptococci (42 FR 58266 at 58277). These early studies demonstrated severe systemic toxicities (Id.). One study (Ref. 1) described the occurrence of acute rheumatic fever in siblings of rheumatic fever patients following vaccination with a partially purified preparation (Id.). In addition, immunological cross-reactivity between streptococcal cell wall protein and mammalian myocardium was demonstrated in vitro (Id.) (Ref. 2). However, the Panel report differentiated between the licensed products under review and highly purified preparations, which were at the research stage. The Panel report stated that the safety profile for a highly purified preparation was quite different, noting that no anti-heart reactive antibody has been observed in the post immunization sera of infants or adults receiving the purified preparation (Id.) (Ref. 3). The Panel concluded, based on demonstrated safety concerns, that the uncontrolled use of the Group A streptococcal antigens in bacterial vaccines with ''No U.S. Standard of Potency'' represented unacceptable risks (42 FR 58266 at 58278). In fact, the Panel stated:

> In view of the carefully conducted controlled studies currently under way with purified chemically defined antigenic preparations, one finds it difficult to justify the use of uncontrolled, poorly defined preparations presumed to contain antigens that have been demonstrated in earlier studies to produce local and systemic reactions. The hypothetical and theoretical objections stemming from laboratory studies linking mammalian and streptococcal antigens have been given serious consideration in the design and conduct of present studies treating humans with the newer purified streptococcal antigens. (42 FR 58266 at 58277). In contrast to the uncontrolled, poorly defined preparations, the Panel made clear at the time that they were not condemning the use of purified or characterized streptococcal antigens (Id.). Further, FDA reviews each biological product and determines whether the risk-benefit relationship is acceptable for the stage of investigation and for licensure (see 21 CFR parts 312 and 601). This review is performed under the authority of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act (see 21 U.S.C. 355(i); 42 U.S.C. 262(a)(3) and (a)(2)(A)). FDA's review is adequate to assess the safety, purity, and potency of products that companies seek to license, and to ensure that human subjects in clinical trials of investigational products are not exposed to unreasonable and significant risk of illness or injury.

Therefore, FDA concludes that § 610.19, which was codified following the Panel report, was meant to apply only to those bacterial vaccines which the Panel had under their review—licensed but poorly characterized products labeled ''No U.S. Standard of Potency''—and not to more characterized preparations under investigation then or now. Because there are no bacterial mixtures with ''No U.S. Standard of Potency'' containing Group A streptococcal antigens licensed at this time, and current manufacturing technology allows for characterization and purification of Group A streptococcal products, this regulation is obsolete. Although it was never intended to apply to the development of Group A streptococcal vaccines that had adequate testing, FDA has determined that it has been perceived to cover these products as well, and therefore should be removed.

II. Highlights of the Proposed Rule

We are proposing to remove § 610.19 because the existing requirement is obsolete and perceived to be impeding the development of Group A streptococcal vaccines using purified or characterized streptococcal antigens. The regulation is obsolete because it was written to apply to a group of products that are no longer on the market. Certain parties interested in developing new Group A streptococcal vaccines perceive the regulation as an impediment, voiced during public meetings and workshops, e.g., the Group A streptococcus workshop sponsored by the National Institute of Allergy and Infectious Diseases, NIH, held in Bethesda, MD on March 29 and 30, 2004. Group A streptococci are responsible for significant morbidity and mortality worldwide, including rheumatic fever and glomerulonephritis, as well as pharyngitis, impetigo, and other clinical manifestations. Therefore, a vaccine to prevent diseases caused by this organism would have a public health benefit. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection.

III. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act of 1995

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule is removing a regulation, it would not result in any increased burden or costs on small entities. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local,

and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Environmental Impact

The agency has determined, under 21 CFR 25.31(h), 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.

C. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies 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. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IV. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Massell, B.F., L.H. Honikman, and J. Amezcua, ''Rheumatic Fever Following Streptococcal Vaccination. Report of Three Cases,'' *Journal of the American Medical Association*, 207(6): 1115–1119, 1969.

2. Kaplan, M.H. and M. Meyeserian, ''An Immunological Cross-Reaction Between Group A Streptococcal Cells and Human Heart Tissue,'' *Lancet*, 1:706–710, 1962.

3. Fox, E.N., L.M. Pachman, M.K. Wittner, and A. Dorfman, ''Primary Immunization of Infants and Children with Group A Streptococcal M Protein,'' *Journal of Infectious Diseases*, 120:598–604, 1969.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated by the Commissioner of Food and Drugs, it is proposed that 21 CFR part 610 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.19 [Removed]

2. Remove § 610.19.

Dated: November 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23545 Filed 12–1–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124988–05]

RIN 1545–BE72

Updated Mortality Tables for Determining Current Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 412(l)(7)(C)(ii) of the Internal Revenue Code (Code) and section 302(d)(7)(C)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) (Pub. L. 93–406, 88 Stat. 829). These regulations provide the public with guidance regarding mortality tables to be used in determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA. These regulations affect plan sponsors and administrators, and participants in and beneficiaries of, certain retirement plans.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 19, 2006, at 10 a.m., must be received by March 29, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–124988–05), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–124988–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bruce Perlin or Linda Marshall at (202) 622–6090 (not a toll-free number); concerning submissions and the hearing and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code provides minimum funding requirements with respect to certain defined benefit pension plans.[1] Section 412(l) provides additional funding requirements for certain of these plans, based in part on a plan's unfunded current liability, as defined in section 412(l)(8).

Pursuant to section 412(c)(6), if the otherwise applicable minimum funding requirement exceeds the plan's full funding limitation (defined in section 412(c)(7) as the excess of a specified measure of plan liability over the plan assets), then the minimum funding for

[1] Section 302 of ERISA sets forth funding rules that are parallel to those in section 412 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 412 of the Code apply as well for purposes of section 302 of ERISA.

the year is reduced by that excess. Under section 412(c)(7)(E), the full funding limitation cannot be less than the excess of 90% of the plan's current liability (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. For this purpose, the term *current liability* generally has the same meaning given that term under section 412(l)(7).

Section 412(l)(7)(C)(ii) provides that, for purposes of determining current liability in plan years beginning on or after January 1, 1995, the mortality table used is the table prescribed by the Secretary. Under section 412(l)(7)(C)(ii)(I), the initial mortality table used in determining current liability under section 412(l)(7) must be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993. For purposes of section 807(d)(5), Rev. Rul. 92–19 (1992–1 C.B. 227) specifies the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on January 1, 1993, as the 1983 Group Annuity Mortality Table (1983 GAM). Accordingly, Rev. Rul. 95–28 (1995–1 C.B. 74) sets forth two gender-specific mortality tables—based on 1983 GAM—for purposes of detemining current liability for partcipants who are not entitled to disability benefits.[2]

Section 412(l)(7)(C)(iii)(I) specifies that the Secretary is to establish different mortality tables to be used to determine current liability for individuals who are entitled to benefits under the plan on account of disability. One such set of tables is to apply to individuals whose disabilities occur in plan years beginning before January 1, 1995, and a second set of tables for individuals whose disabilities occur in plan years beginning on or after such date. Under section 412(l)(7)(C)(iii)(II), the separate tables for disabilities that occur in plan years beginning after December 31, 1994 apply only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Rev. Rul. 96–7 (1996–1 C.B. 59) sets forth the mortality tables established under section 412(l)(7)(C)(iii).

Under section 412(l)(7)(C)(ii)(III), the Secretary of the Treasury is required to periodically (at least every 5 years) review any tables in effect under that subsection and, to the extent necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience. Section 412(l)(7)(C)(ii)(II) provides that the updated tables are to take into account the results of available independent studies of mortality of individuals covered by pension plans. Pursuant to section 412(l)(7)(C)(ii)(II), any new mortality tables prescribed by regulation can be effective no earlier than the first plan year beginning after December 31, 1999. Under section 412(l)(10), increases in current liability arising from the adoption of such a new mortality table generally are required to be amortized over a 10-year period.

In order to facilitate the review of the applicable mortality tables pursuant to section 412(l)(7)(C)(ii)(III), Rev. Rul. 95–28 requested comments concerning the mortality table to be used for determining current liability for plan years beginning after December 31, 1999, and information on existing or upcoming independent studies of mortality of individuals covered by pension plans. In Announcement 2000–7 (2000–1 C.B. 586), the IRS and the Treasury Department also requested comments regarding mortality tables to be used for determining current liability for plan years beginning after December 31, 1999, but indicated that it was anticipated that in no event would there be any change in the mortality tables for plan years beginning before January 1, 2001.

Notice 2003–62 (2003–2 C.B. 576) was issued as part of the periodic review by the IRS and the Treasury Department of the mortality tables used in determining current liability under section 412(l)(7). At the time the Notice 2003–62 was issued, the IRS and the Treasury Department were aware of two reviews of mortality experience for retirement plan participants undertaken by the Retirement Plans Experience Committee of the Society of Actuaries (the UP–94 Study and the RP–2000 Mortality Tables Report),[3] and commentators were invited to submit any other independent studies of pension plan mortality experience. Notice 2003–62 also requested the submission of studies regarding projected trends in mortality experience. With respect to projecting mortality improvements, the IRS and the Treasury Department requested comments regarding the advantages and disadvantages of reflecting these trends on an ongoing basis through the use of generational, modified generational, or sequentially static mortality tables.

In addition, Notice 2003–62 requested comments on whether certain risk factors should be taken into account in predicting an individual's mortality. Comments were requested as to the extent that separate mortality tables should be prescribed that take into account these factors, with particular attention paid to the administrative issues in applying such distinctions. In this regard, comments were specifically requested as to how it would be determined which category an individual fits into, the extent to which an individual, once categorized, remains in that same category, the classification of individuals for whom adequate information is unavailable, whether distinctions are applicable to beneficiaries, and the extent to which distinctions may overlap or work at cross purposes. Some examples of factors that were listed in Notice 2003–62 are the following: gender, tobacco use, job classification, annuity size, and income. Comments were also requested as to whether classification systems, if permitted, should be mandatory or optional. A number of comments were submitted regarding the issues identified in Notice 2003–62.

The IRS and the Treasury Department have reviewed the mortality tables that are used for purposes of determining current liability for participants and beneficiaries (other than disabled participants). The existing mortality table for determining current liability (1983 GAM) was compared to independent studies of mortality of individuals covered by pension plans, after reflecting projected trends for mortality improvement through 2007. The comparison indicates that the 1983

[2] Section 417(e)(3)(A)(ii)(I) requires the present value of certain distributions to be determined using a table prescribed by the Secretary based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined. Thus, in contrast to the mortality table initially prescribed for determining current liability under section 412(l)(7)(C)(ii)(I), the mortality table used to determine present value under section 417(e)(3)(A)(ii)(I) is not fixed as of a specified date but, rather, must be updated when the prevailing commissioner's standard table changes. Rev. Rul. 95–6 (1995–1 C.B. 80) set forth tables under section 417(e)(3)(A)(ii)(I) based on 1983 GAM, which was the prevailing commissioner's standard table at that time. The 1994 Group Annuity Reserving Table became the prevailing commissioners' standard table under section 807(d)(5)(A) for annuities issued on or after January 1, 1999. See Rev. Rul. 2001–38 (2001–2 C.B. 124). Accordingly, Rev. Rul. 2001–62 (2001–2 C.B. 632) required plans to adopt a new mortality table (based on the 1994 Group Annuity Reserving Table) for calculating the minimum present value of distributions pursuant to section 417(e).

[3] The UP–94 Study, prepared by the UP–84 Task Force of the Society of Actuaries, was published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), p. 819. The RP–2000 Mortality Table Report was released in July, 2000. Society of Actuaries, RP–2000 Mortaality Tables Report, at *http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables/*.

GAM is no longer appropriate for determining current liability. For example, comparing the RP–2000 Combined Healthy Mortality Table for males projected to 2007 (when this proposed regulation would take effect) with the 1983 GAM shows that a current mortality table reflects a 52% decrease in the number of expected deaths at age 50, a 26% decrease at 65, and an 19% decrease at age 80. Comparing annuity values derived under these updated mortality rates with annuity values determined under the 1983 GAM shows an increase in present value of 12% for a 35-year-old male with a deferred annuity payable at age 65, a 5% increase for a 55-year-old male with an immediate annuity, and a 7% increase for a 75-year-old male with an immediate annuity (all calculated at a 6% interest rate). Female mortality rates also changed, although with a different pattern. For females, the number of expected deaths decreased by 10% at age 50, but increased by 33% at age 65 and increased by 2% at age 80.[4] Comparing annuity values derived under these updated mortality rates with annuity values determined under the 1983 GAM shows a decrease in present value of 3% for a 35-year-old female with a deferred annuity payable at age 65, a 2% decrease for a 55-year-old female with an immediate annuity, and a 2% decrease for a 75-year-old female with an immediate annuity (all calculated at a 6% interest rate).

Based on this review of the 1983 GAM compared to more recent mortality experience, the IRS and Treasury Department have determined that updated mortality tables should be used to determine current liability for participants and beneficiaries (other than disabled participants).[5]

Explanation of Provisions

The proposed regulations would set forth the methodology the IRS and Treasury would use to establish mortality tables to be used under section 412(l)(7)(C)(ii) to determine current liability for participants and beneficiaries (other than disabled participants). The mortality tables that would apply for the 2007 plan year are set forth in the proposed regulations. The mortality tables that would be used for subsequent plan years would be published in the Internal Revenue Bulletin. Comments are requested regarding whether it would be desirable to publish a series of tables for each of a number of years (such as five years) along with final regulations, with tables for subsequent years to be published in the Internal Revenue Bulletin.

These new mortality tables would be based on the tables contained in the RP–2000 Mortality Tables Report. Commentators generally recommended that the RP–2000 mortality tables be the basis for the mortality tables used under section 412(l)(7)(C)(ii) (although one commentator urged that large employers be permitted to use mortality tables tailored to their actual mortality experience). The IRS and the Treasury Department have reviewed the RP–2000 mortality tables and the accompanying report published by the Society of Actuaries, and have determined that the RP–2000 mortality tables form the best available basis for predicting mortality of pension plan participants and beneficiaries (other than disabled participants) based on pension plan experience and expected trends. Accordingly, the proposed regulations would change the mortality tables used to determine current liability from tables based on 1983 GAM to updated tables based on the RP–2000 mortality tables. As under the currently applicable mortality tables, the mortality tables set forth in these proposed regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality.

The proposed regulations would provide for separate sets of tables for annuitants and nonannuitants. This distinction has been made because the RP–2000 Mortality Tables Report indicates that these two groups have significantly different mortality experience. This is particularly true at typical ages for early retirees, where the number of health-induced early retirements results in a population that has higher mortality rates than the population of currently employed individuals. Under the proposed regulations, the annuitant mortality table would be applied to determine the present value of benefits for each annuitant. The annuitant mortality table is also used for each nonannuitant (*i.e.*, an active employee or a terminated vested participant) for the period after which the nonannuitant is projected to commence receiving benefits, while the nonannuitant mortality table is applied for the period before the nonannuitant is projected to commence receiving benefits. Thus, for example, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (*i.e.*, so that the probability of an active male participant living from age 45 to the age of 55 using the mortality table that would apply in 2007 is 98.59%) and the annuitant mortality table after the participant attains age 55. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above.

The mortality tables that would be established pursuant to this regulation would be based on mortality improvements through the year of the actuarial valuation and would reflect the impact of further expected improvements in mortality. Commentators generally stated that the projection of mortality improvement is desirable because it reflects expected mortality more accurately than using mortality tables that do not reflect such projection. The IRS and Treasury agree with these comments, and believe that failing to project mortality improvement in determining current liability would tend to leave plans underfunded. The regulations would specify the projection factors that are to be used to calculate expected mortality improvement. These projection factors are from Mortality Projection Scale AA, which was also recommended for use in the UP–94 Study and RP–2000 Mortality Tables Report. The mortality tables for annuitants are generally based on a future projection period of 7 years, and the mortality tables for nonannuitants are generally based on a future projection period of 15 years. These projection periods were selected as the expected average duration of liabilities and are consistent with projection periods suggested by commentators.

The RP–2000 Mortality Tables Report did not develop mortality rates for annuitants younger than 50 years of age or for nonannuitants older than 70 years of age. The mortality tables for annuitants use the values that apply for the nonannuitant mortality tables at younger ages, with a smoothed transition to the annuitant mortality tables by age 50. Similarly, the mortality tables for both male and female nonannuitants use the values that apply

[4] The developers of the 1983 GAM table acknowledged that the number of female lives used to develop the table had been relatively small and they recommended an age setback to the male table be used rather than a separate female table. See Development of the 1983 Group Annuity Mortality Table, Transaction of the Society of Actuaries, Vol. XXXV (1983), pp. 859, 883–84.

[5] The IRS and Treasury are in the process of reviewing recent mortality experience and expected trends for disabled participants to determine whether updated mortality tables under section 412(l)(7)(C)(iii) are needed.

for the annuitant mortality tables at older ages (*i.e.*, ages above 70), with a smoothed transition to the nonannuitant mortality tables by age 70.

The mortality tables for annuitants applicable for the 2007 plan year would use the values that apply for the nonannuitant mortality tables at ages 40 and younger for males and at ages 44 and younger for females with a smoothed transition to the annuitant mortality tables between the ages of 41 and 49 for males and between 45 and 49 for females. Similarly, the mortality tables for both male and female nonannuitants applicable for the 2007 plan year use the values that apply for the annuitant mortality tables at ages 80 and older, with a smoothed transition to the nonannuitant mortality tables between the ages of 71 and 79.

The proposed regulations would provide an option for smaller plans (*i.e.*, plans where the total of active and inactive participants is less than 500) to use a single blended table for all healthy participants—in lieu of the separate tables for annuitants and nonannuitants—in order to simplify the actuarial valuation for these plans. This blended table would be constructed from the separate nonannuitant and annuitant tables using the nonannuitant/annuitant weighting factors published in the RP–2000 Mortality Tables Report. However, because the RP–2000 Mortality Tables Report does not provide weighting factors before age 50 or after age 70, the IRS and the Treasury Department would extend the table of weighting factors for ages 41 through 50 (ages 45–50 for females) and for ages 70 through 79 in order to develop the blended table.

The proposed regulations do not provide for the use of generational mortality tables to compute a plan's current liability. Although commentators generally stated that the use of generational mortality tables provides a more accurate prediction of participant mortality, they urged against requiring the use of generational mortality tables, arguing that many actuarial valuation systems are not currently capable of using a generational approach to mortality improvement. However, several commentators requested that the use of generational mortality tables be permitted on an optional basis. The IRS and the Treasury Department agree that the use of generational mortality tables would be preferable, but believe that the approach taken in the proposed regulations (*i.e.*, projecting liabilities for annuitants and nonannuitants to average expected duration) is appropriate because it reasonably approximates the use of generational tables without being overly complex to apply. In light of several comments requesting that the use of generational tables be optional, the IRS and the Treasury Department are considering adopting such a rule and request comments regarding any issues that might arise in implementing an optional use of a generational table. In addition, comments are requested regarding how much lead time would be appropriate if generational mortality tables were to be required in the future.

The RP–2000 mortality tables and the accompanying report analyze differences in expected mortality based on a number of factors, including job classification, annuity size, employment status (*i.e.*, active or retired), and industry. The IRS and the Treasury Department have considered whether separate mortality tables should be provided based on any of these distinctions, or on other distinctions cited in Notice 2003–62, such as tobacco use or income level. The IRS and the Treasury Department have concluded that it is inappropriate to apply distinctions other than the annuitant and nonannuitant distinction described above. In general, these other distinctions were not made because of the complexity involved in the process. For example, no distinction was made for tobacco use because of the difficulty in obtaining, maintaining, and documenting accurate data on the extent of tobacco use.

Although several commentators recommended that separate mortality tables apply to plans that are determined to be ''white collar'' or ''blue collar'' in nature, the IRS and Treasury have not adopted this recommendation because of serious administrability concerns. Commentators recognized that it may be difficult to identify whether a specific individual falls into the category of blue collar or white collar (especially if an individual has shifted job classifications during his or her career), and suggested that the classification be based on whether the plan is primarily composed of blue collar employees or white collar employees or whether a plan covers a mixed population of blue collar and white collar employees. While the plan-wide classification may avoid the difficulties of categorizing those individuals who are hard to classify as either blue collar or white collar, it would create additional problems if a plan shifted between these categories.

More importantly, the RP–2000 Mortality Tables Report indicates that plans that are primarily blue collar in nature, but that provide large annuities, tend to have significantly better mortality experience than the average mortality for individuals in the RP–2000 Mortality Tables Report. As a result, classifying such a plan as blue collar and allowing the plan to use a weaker mortality table will lead to systematic underfunding of the plan.[6] Other concerns weighing against the use of separate tables for blue collar and white collar plans include the risk of anti-selection by plans in the absence of mandatory adjustments and the lack of research showing the extent to which any mortality differences attributable to blue collar or white collar status extend to beneficiaries of the plan.

As noted above, the mortality experience is significantly different for annuitants and nonannuitants. While the use of separate mortality rates for these groups of individuals will likely entail changes in programming of actuarial software, the IRS and Treasury believe that the improvement in accuracy resulting from the the use of separate mortality tables for annuitants and nonannuitants more than offsets the added complexity. Furthermore, the annutant/nonannuitant distinction does not have the same difficult administrative issues as separate tables based on collar type, annuity size, or tobacco. This is because it is usually a straightforward process to categorize an individual as an annuitant or a nonannuitant, and once an indvidual is categorized as an annuitant, the individual's status usually does not change again.

Proposed Effective Date

These regulations are proposed to apply to plan years beginning on or after January 1, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations provide for special rules to simplify the application of these regulations by actuaries who provide services for small entities. Therefore, a Regulatory Flexibility Analysis under the

[6] Although some commentators suggested addressing this problem by treating some highly compensated union employees as if they were white collar workers, the developers of the RP–2000 Mortality Tables Report (and the researchers they hired to apply a multivariate analysis of the data) were unable to find a practical model to apply the combined effect of collar and annuity amount on mortality.

Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 19, 2006, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (signed original and eight (8) copies) or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by March 29, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Bruce Perlin and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.412(l)(7)–1 is added to read as follows:

§ 1.412(l)(7)–1 Mortality tables used to determine current liability.

(a) *General rules.* This section sets forth the basis used to generate mortality tables to be used in connection with computations under section 412(l)(7)(C)(ii) for determining current liability for participants and beneficiaries (other than disabled participants). The mortality tables, which reflect the probability of death at each age, that are to be used for plan years beginning during 2007, are provided in paragraph (e) of this section. The mortality tables to be used for later plan years are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants.* Separate tables are provided for use by annuitants and nonannuitants. The annuitant mortality table is applied to determine the present value of benefits for each annuitant, and to each nonannuitant for the period after which the nonannuitant is projected to commence receiving benefits. For purposes of this section, an annuitant means a plan participant who is currently receiving benefits and a nonannuitant means a plan participant who is not currently receiving benefits (e.g., an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit which has commenced and a nonannuitant with respect to the balance of the benefit. The nonannuitant mortality table is applied to each nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. Thus, for example, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (*i.e.*, so that the probability of an active male participant living from age 45 to the age of 55 for the table that applies in plan years beginning in 2007 is 98.59%) and the annuitant mortality table for the period ages 55 and above. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above.

(2) *Small plan tables.* As an alternative to the separate tables specified for annuitants and nonannuitants, a small plan can use a combined table that applies the same mortality rates to both annuitants and nonannuitants. For this purpose, a small plan is defined as a plan with fewer than 500 participants (including both active and inactive participants).

(c) *Construction of the tables*—(1) *Source of basic data.* The mortality tables are based on the separate mortality tables for employees and healthy annuitants under the RP–2000 Mortality Tables Report (*http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables/*), as set forth in paragraph (d) of this section.

(2) *Projected mortality improvements.* The mortality rates under the basic mortality tables are projected to improve using Projection Scale AA, as set forth in paragraph (d) of this section. The annuitant mortality rates for a plan year are based on applying the improvement factors from 2000 until 7 years after the plan year. The nonannuitant mortality rates for a plan year are based on applying the improvement factors from 2000 until 15 years after the plan year. The projection scale is applied using the following equation: Projected mortality rate = base mortality rate * [(1 − projection factor)∧(number of years projected)].

(3) *Treatment of young annuitants and older nonannuitants.* The mortality tables for annuitants use the values that apply for the nonannuitant mortality tables at younger ages, with a smoothed transition to the annuitant mortality tables by age 50. Similarly, the mortality tables for both male and female nonannuitants use the values that apply for the annuitant mortality tables at older ages (*i.e.*, ages above 70), with a smoothed transition to the nonannuitant mortality tables by age 70.

(4) *Construction of the combined table for small plans.* The combined table for small plans is constructed from the separate nonannuitant and annuitant tables using the nonannuitant weighting

factors as set forth in paragraph (d) of this section. The weighting factors are applied to develop this table using the following equation: Combined mortality rate = [non-annuitant rate * (1 − weighting factor)] + [annuitant rate * weighting factor].

(d) *Tables.* As set forth in paragraph (c) of this section, the following values are used to develop the mortality tables that are used for determining current liability under section 412(l)(7)(C)(ii) and this section.

Age	Male				Female			
	Non-annuitant table (year 2000)	Annuitant table (year 2000)	Projection scale AA [7]	Weighting factors for small plans [8]	Non-annuitant table (year 2000)	Annuitant table (year 2000)	Projection scale AA	Weighting factors for small plans
1	0.000637		0.020		0.000571		0.020	
2	0.000430		0.020		0.000372		0.020	
3	0.000357		0.020		0.000278		0.020	
4	0.000278		0.020		0.000208		0.020	
5	0.000255		0.020		0.000188		0.020	
6	0.000244		0.020		0.000176		0.020	
7	0.000234		0.020		0.000165		0.020	
8	0.000216		0.020		0.000147		0.020	
9	0.000209		0.020		0.000140		0.020	
10	0.000212		0.020		0.000141		0.020	
11	0.000219		0.020		0.000143		0.020	
12	0.000228		0.020		0.000148		0.020	
13	0.000240		0.020		0.000155		0.020	
14	0.000254		0.019		0.000162		0.018	
15	0.000269		0.019		0.000170		0.016	
16	0.000284		0.019		0.000177		0.015	
17	0.000301		0.019		0.000184		0.014	
18	0.000316		0.019		0.000188		0.014	
19	0.000331		0.019		0.000190		0.015	
20	0.000345		0.019		0.000191		0.016	
21	0.000357		0.018		0.000192		0.017	
22	0.000366		0.017		0.000194		0.017	
23	0.000373		0.015		0.000197		0.016	
24	0.000376		0.013		0.000201		0.015	
25	0.000376		0.010		0.000207		0.014	
26	0.000378		0.006		0.000214		0.012	
27	0.000382		0.005		0.000223		0.012	
28	0.000393		0.005		0.000235		0.012	
29	0.000412		0.005		0.000248		0.012	
30	0.000444		0.005		0.000264		0.010	
31	0.000499		0.005		0.000307		0.008	
32	0.000562		0.005		0.000350		0.008	
33	0.000631		0.005		0.000394		0.009	
34	0.000702		0.005		0.000435		0.010	
35	0.000773		0.005		0.000475		0.011	
36	0.000841		0.005		0.000514		0.012	
37	0.000904		0.005		0.000554		0.013	
38	0.000964		0.006		0.000598		0.014	
39	0.001021		0.007		0.000648		0.015	
40	0.001079		0.008		0.000706		0.015	
41	0.001142		0.009	0.0045	0.000774		0.015	
42	0.001215		0.010	0.0091	0.000852		0.015	
43	0.001299		0.011	0.0136	0.000937		0.015	
44	0.001397		0.012	0.0181	0.001029		0.015	
45	0.001508		0.013	0.0226	0.001124		0.016	0.0084
46	0.001616		0.014	0.0272	0.001223		0.017	0.0167
47	0.001734		0.015	0.0317	0.001326		0.018	0.0251
48	0.001860		0.016	0.0362	0.001434		0.018	0.0335
49	0.001995		0.017	0.0407	0.001550		0.018	0.0419
50	0.002138	0.005347	0.018	0.0453	0.001676	0.002344	0.017	0.0502
51	0.002288	0.005528	0.019	0.0498	0.001814	0.002459	0.016	0.0586
52	0.002448	0.005644	0.020	0.0686	0.001967	0.002647	0.014	0.0744
53	0.002621	0.005722	0.020	0.0953	0.002135	0.002895	0.012	0.0947
54	0.002812	0.005797	0.020	0.1288	0.002321	0.003190	0.010	0.1189
55	0.003029	0.005905	0.019	0.2066	0.002526	0.003531	0.008	0.1897
56	0.003306	0.006124	0.018	0.3173	0.002756	0.003925	0.006	0.2857
57	0.003628	0.006444	0.017	0.3780	0.003010	0.004385	0.005	0.3403
58	0.003997	0.006895	0.016	0.4401	0.003291	0.004921	0.005	0.3878
59	0.004414	0.007485	0.016	0.4986	0.003599	0.005531	0.005	0.4360
60	0.004878	0.008196	0.016	0.5633	0.003931	0.006200	0.005	0.4954
61	0.005382	0.009001	0.015	0.6338	0.004285	0.006919	0.005	0.5805
62	0.005918	0.009915	0.015	0.7103	0.004656	0.007689	0.005	0.6598
63	0.006472	0.010951	0.014	0.7902	0.005039	0.008509	0.005	0.7520

Age	Male				Female			
	Non-annuitant table (year 2000)	Annuitant table (year 2000)	Projection scale AA [7]	Weighting factors for small plans [8]	Non-annuitant table (year 2000)	Annuitant table (year 2000)	Projection scale AA	Weighting factors for small plans
64	0.007028	0.012117	0.014	0.8355	0.005429	0.009395	0.005	0.8043
65	0.007573	0.013419	0.014	0.8832	0.005821	0.010364	0.005	0.8552
66	0.008099	0.014868	0.013	0.9321	0.006207	0.011413	0.005	0.9118
67	0.008598	0.016460	0.013	0.9510	0.006583	0.012540	0.005	0.9367
68	0.009069	0.018200	0.014	0.9639	0.006945	0.013771	0.005	0.9523
69	0.009510	0.020105	0.014	0.9714	0.007289	0.015153	0.005	0.9627
70	0.009922	0.022206	0.015	0.9740	0.007613	0.016742	0.005	0.9661
71	.....	0.024570	0.015	0.9766	.....	0.018579	0.006	0.9695
72	.....	0.027281	0.015	0.9792	.....	0.020665	0.006	0.9729
73	.....	0.030387	0.015	0.9818	.....	0.022970	0.007	0.9763
74	.....	0.033900	0.015	0.9844	.....	0.025458	0.007	0.9797
75	.....	0.037834	0.014	0.9870	.....	0.028106	0.008	0.9830
76	.....	0.042169	0.014	0.9896	.....	0.030966	0.008	0.9864
77	.....	0.046906	0.013	0.9922	.....	0.034105	0.007	0.9898
78	.....	0.052123	0.012	0.9948	.....	0.037595	0.007	0.9932
79	.....	0.057927	0.011	0.9974	.....	0.041506	0.007	0.9966
80	.....	0.064368	0.010	1.0000	.....	0.045879	0.007	1.0000
81	.....	0.072041	0.009	1.0000	.....	0.050780	0.007	1.0000
82	.....	0.080486	0.008	1.0000	.....	0.056294	0.007	1.0000
83	.....	0.089718	0.008	1.0000	.....	0.062506	0.007	1.0000
84	.....	0.099779	0.007	1.0000	.....	0.069517	0.007	1.0000
85	.....	0.110757	0.007	1.0000	.....	0.077446	0.006	1.0000
86	.....	0.122797	0.007	1.0000	.....	0.086376	0.005	1.0000
87	.....	0.136043	0.006	1.0000	.....	0.096337	0.004	1.0000
88	.....	0.150590	0.005	1.0000	.....	0.107303	0.004	1.0000
89	.....	0.166420	0.005	1.0000	.....	0.119154	0.003	1.0000
90	.....	0.183408	0.004	1.0000	.....	0.131682	0.003	1.0000
91	.....	0.199769	0.004	1.0000	.....	0.144604	0.003	1.0000
92	.....	0.216605	0.003	1.0000	.....	0.157618	0.003	1.0000
93	.....	0.233662	0.003	1.0000	.....	0.170433	0.002	1.0000
94	.....	0.250693	0.003	1.0000	.....	0.182799	0.002	1.0000
95	.....	0.267491	0.002	1.0000	.....	0.194509	0.002	1.0000
96	.....	0.283905	0.002	1.0000	.....	0.205379	0.002	1.0000
97	.....	0.299852	0.002	1.0000	.....	0.215240	0.001	1.0000
98	.....	0.315296	0.001	1.0000	.....	0.223947	0.001	1.0000
99	.....	0.330207	0.001	1.0000	.....	0.231387	0.001	1.0000
100	.....	0.344556	0.001	1.0000	.....	0.237467	0.001	1.0000
101	.....	0.358628	0.000	1.0000	.....	0.244834	0.000	1.0000
102	.....	0.371685	0.000	1.0000	.....	0.254498	0.000	1.0000
103	.....	0.383040	0.000	1.0000	.....	0.266044	0.000	1.0000
104	.....	0.392003	0.000	1.0000	.....	0.279055	0.000	1.0000
105	.....	0.397886	0.000	1.0000	.....	0.293116	0.000	1.0000
106	.....	0.400000	0.000	1.0000	.....	0.307811	0.000	1.0000
107	.....	0.400000	0.000	1.0000	.....	0.322725	0.000	1.0000
108	.....	0.400000	0.000	1.0000	.....	0.337441	0.000	1.0000
109	.....	0.400000	0.000	1.0000	.....	0.351544	0.000	1.0000
110	.....	0.400000	0.000	1.0000	.....	0.364617	0.000	1.0000
111	.....	0.400000	0.000	1.0000	.....	0.376246	0.000	1.0000
112	.....	0.400000	0.000	1.0000	.....	0.386015	0.000	1.0000
113	.....	0.400000	0.000	1.0000	.....	0.393507	0.000	1.0000
114	.....	0.400000	0.000	1.0000	.....	0.398308	0.000	1.0000
115	.....	0.400000	0.000	1.0000	.....	0.400000	0.000	1.0000
116	.....	0.400000	0.000	1.0000	.....	0.400000	0.000	1.0000
117	.....	0.400000	0.000	1.0000	.....	0.400000	0.000	1.0000
118	.....	0.400000	0.000	1.0000	.....	0.400000	0.000	1.0000
119	.....	0.400000	0.000	1.0000	.....	0.400000	0.000	1.0000
120	.....	1.000000	0.000	1.0000	.....	1.000000	0.000	1.0000

(e) *Tables for plan years beginning during 2007.* The following tables are to be used for determining current liability under section 412(l)(7)(C)(ii) for plan years beginning during 2007.

Age	Male			Female		
	Non-annuitant table	Annuitant table	Optional combined table for small plans	Non-annuitant table	Annuitant table	Optional combined table for small plans
1	0.000408	0.000408	0.000408	0.000366	0.000366	0.000366
2	0.000276	0.000276	0.000276	0.000239	0.000239	0.000239
3	0.000229	0.000229	0.000229	0.000178	0.000178	0.000178
4	0.000178	0.000178	0.000178	0.000133	0.000133	0.000133
5	0.000163	0.000163	0.000163	0.000121	0.000121	0.000121
6	0.000156	0.000156	0.000156	0.000113	0.000113	0.000113
7	0.000150	0.000150	0.000150	0.000106	0.000106	0.000106
8	0.000138	0.000138	0.000138	0.000094	0.000094	0.000094
9	0.000134	0.000134	0.000134	0.000090	0.000090	0.000090
10	0.000136	0.000136	0.000136	0.000090	0.000090	0.000090
11	0.000140	0.000140	0.000140	0.000092	0.000092	0.000092
12	0.000146	0.000146	0.000146	0.000095	0.000095	0.000095
13	0.000154	0.000154	0.000154	0.000099	0.000099	0.000099
14	0.000167	0.000167	0.000167	0.000109	0.000109	0.000109
15	0.000176	0.000176	0.000176	0.000119	0.000119	0.000119
16	0.000186	0.000186	0.000186	0.000127	0.000127	0.000127
17	0.000197	0.000197	0.000197	0.000135	0.000135	0.000135
18	0.000207	0.000207	0.000207	0.000138	0.000138	0.000138
19	0.000217	0.000217	0.000217	0.000136	0.000136	0.000136
20	0.000226	0.000226	0.000226	0.000134	0.000134	0.000134
21	0.000239	0.000239	0.000239	0.000132	0.000132	0.000132
22	0.000251	0.000251	0.000251	0.000133	0.000133	0.000133
23	0.000267	0.000267	0.000267	0.000138	0.000138	0.000138
24	0.000282	0.000282	0.000282	0.000144	0.000144	0.000144
25	0.000301	0.000301	0.000301	0.000152	0.000152	0.000152
26	0.000331	0.000331	0.000331	0.000164	0.000164	0.000164
27	0.000342	0.000342	0.000342	0.000171	0.000171	0.000171
28	0.000352	0.000352	0.000352	0.000180	0.000180	0.000180
29	0.000369	0.000369	0.000369	0.000190	0.000190	0.000190
30	0.000398	0.000398	0.000398	0.000212	0.000212	0.000212
31	0.000447	0.000447	0.000447	0.000257	0.000257	0.000257
32	0.000503	0.000503	0.000503	0.000293	0.000293	0.000293
33	0.000565	0.000565	0.000565	0.000323	0.000323	0.000323
34	0.000629	0.000629	0.000629	0.000349	0.000349	0.000349
35	0.000692	0.000692	0.000692	0.000372	0.000372	0.000372
36	0.000753	0.000753	0.000753	0.000394	0.000394	0.000394
37	0.000810	0.000810	0.000810	0.000415	0.000415	0.000415
38	0.000844	0.000844	0.000844	0.000439	0.000439	0.000439
39	0.000875	0.000875	0.000875	0.000465	0.000465	0.000465
40	0.000904	0.000904	0.000904	0.000506	0.000506	0.000506
41	0.000936	0.000963	0.000936	0.000555	0.000555	0.000555
42	0.000974	0.001081	0.000975	0.000611	0.000611	0.000611
43	0.001018	0.001258	0.001021	0.000672	0.000672	0.000672
44	0.001071	0.001493	0.001079	0.000738	0.000738	0.000738
45	0.001131	0.001788	0.001146	0.000788	0.000791	0.000788
46	0.001185	0.002142	0.001211	0.000839	0.000896	0.000840
47	0.001244	0.002554	0.001286	0.000889	0.001054	0.000893
48	0.001304	0.003026	0.001366	0.000962	0.001265	0.000972
49	0.001368	0.003557	0.001457	0.001039	0.001528	0.001059
50	0.001434	0.004146	0.001557	0.001149	0.001844	0.001184
51	0.001500	0.004226	0.001636	0.001272	0.001962	0.001312
52	0.001570	0.004254	0.001754	0.001442	0.002173	0.001496
53	0.001681	0.004312	0.001932	0.001637	0.002445	0.001714
54	0.001803	0.004369	0.002134	0.001861	0.002771	0.001969
55	0.001986	0.004514	0.002508	0.002117	0.003155	0.002314
56	0.002217	0.004749	0.003020	0.002414	0.003608	0.002755
57	0.002488	0.005069	0.003464	0.002696	0.004088	0.003170
58	0.002803	0.005501	0.003990	0.002947	0.004588	0.003583
59	0.003095	0.005972	0.004529	0.003223	0.005156	0.004066
60	0.003421	0.006539	0.005177	0.003521	0.005780	0.004640
61	0.003860	0.007284	0.006030	0.003838	0.006450	0.005354
62	0.004244	0.008024	0.006929	0.004170	0.007168	0.006148
63	0.004746	0.008989	0.008099	0.004513	0.007932	0.007084
64	0.005154	0.009947	0.009159	0.004862	0.008758	0.007996
65	0.005553	0.011015	0.010377	0.005213	0.009662	0.009018
66	0.006073	0.012379	0.011951	0.005559	0.010640	0.010192
67	0.006447	0.013705	0.013349	0.005896	0.011690	0.011323
68	0.006650	0.014940	0.014641	0.006220	0.012838	0.012522
69	0.006974	0.016504	0.016231	0.006528	0.014126	0.013843
70	0.007115	0.017971	0.017689	0.006818	0.015607	0.015309

Age	Male			Female		
	Non-annuitant table	Annuitant table	Optional combined table for small plans	Non-annuitant table	Annuitant table	Optional combined table for small plans
71	0.008002	0.019884	0.019606	0.007450	0.017078	0.016784
72	0.009777	0.022078	0.021822	0.008714	0.018995	0.018716
73	0.012439	0.024592	0.024371	0.010610	0.020819	0.020577
74	0.015988	0.027435	0.027256	0.013139	0.023074	0.022872
75	0.020425	0.031057	0.030919	0.016299	0.025117	0.024967
76	0.025749	0.034615	0.034523	0.020092	0.027673	0.027570
77	0.031961	0.039054	0.038999	0.024516	0.030911	0.030846
78	0.039059	0.044018	0.043992	0.029573	0.034074	0.034043
79	0.047046	0.049617	0.049610	0.035261	0.037618	0.037610
80	0.055919	0.055919	0.055919	0.041582	0.041582	0.041582
81	0.063476	0.063476	0.063476	0.046024	0.046024	0.046024
82	0.071926	0.071926	0.071926	0.051021	0.051021	0.051021
83	0.080176	0.080176	0.080176	0.056651	0.056651	0.056651
84	0.090433	0.090433	0.090433	0.063006	0.063006	0.063006
85	0.100383	0.100383	0.100383	0.071188	0.071188	0.071188
86	0.111295	0.111295	0.111295	0.080522	0.080522	0.080522
87	0.125051	0.125051	0.125051	0.091080	0.091080	0.091080
88	0.140385	0.140385	0.140385	0.101448	0.101448	0.101448
89	0.155142	0.155142	0.155142	0.114246	0.114246	0.114246
90	0.173400	0.173400	0.173400	0.126258	0.126258	0.126258
91	0.188868	0.188868	0.188868	0.138648	0.138648	0.138648
92	0.207683	0.207683	0.207683	0.151126	0.151126	0.151126
93	0.224037	0.224037	0.224037	0.165722	0.165722	0.165722
94	0.240367	0.240367	0.240367	0.177747	0.177747	0.177747
95	0.260098	0.260098	0.260098	0.189133	0.189133	0.189133
96	0.276058	0.276058	0.276058	0.199703	0.199703	0.199703
97	0.291564	0.291564	0.291564	0.212246	0.212246	0.212246
98	0.310910	0.310910	0.310910	0.220832	0.220832	0.220832
99	0.325614	0.325614	0.325614	0.228169	0.228169	0.228169
100	0.339763	0.339763	0.339763	0.234164	0.234164	0.234164
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

(f) *Effective date.* The mortality tables described in this section apply for plan years beginning on or after January 1, 2007.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E5–6742 Filed 12–1–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 96

[OAR 2003–0053; FRL–8003–7]

Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule): Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration; request for comment; notice of public hearing.

SUMMARY: On May 12, 2005, EPA published in the **Federal Register** the final ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone'' (Clean Air Interstate Rule or CAIR). The CAIR requires certain upwind States to reduce emissions of nitrogen oxides (NO_X) and/or sulfur dioxide (SO_2) that significantly contribute to nonattainment of, or interfere with maintenance by,

downwind States with respect to the fine particle and/or 8-hour ozone national ambient air quality standards (NAAQS). Subsequently, EPA received 11 petitions for reconsideration of the final rule. In this notice, EPA is announcing its decision to reconsider four specific issues in the CAIR and is requesting comment on those issues.

The EPA is seeking comment only on the aspects of the CAIR specifically identified in this notice. We will not respond to comments addressing other provisions of the CAIR or any related rulemakings.

DATES: Comments must be received on or before January 13, 2006. A public hearing will be held on December 14, 2005 in Washington, DC. For additional information on the public hearing, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0053, by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. Attention E-Docket No. OAR–2003–0053.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments. Attention E-Docket No. OAR–2003–0053.
- E-mail: *A-and-R-Docket@epa.gov.* Attention E-Docket No. OAR–2003–0053.
- Fax: The fax number of the Air Docket is (202) 566–1741. Attention E-Docket No. OAR–2003–0053.
- Mail: EPA Docket Center, EPA West (Air Docket), Attention E-Docket No. OAR–2003–0053, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center (Air Docket), Attention E-Docket No. OAR–2003–0053, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0053. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. (For instructions on submitting CBI, see below under **SUPPLEMENTARY INFORMATION.**)

The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional information on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1742 and the fax number is (202) 566–1741.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's action, please contact Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3347, e-mail address*oldham.carla@epa.gov.* For questions concerning the analyses described in section III of this notice, please contact Chitra Kumar, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9128, e-mail address *kumar.chitra@epa.gov.* For legal questions, please contact Sonja Rodman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone 202–564–4079, e-mail address *rodman.sonja@epa.gov.*

For information concerning the public hearing, please contact Jo Ann Allman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–1815, e-mail address *allman.joann@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

The CAIR does not directly regulate emissions sources. Instead, it requires States to develop, adopt, and submit SIP revisions that would achieve the necessary SO_2 and NO_X emissions reductions, and leaves to the States the task of determining how to obtain those reductions, including which entities to regulate.

Public Hearing. On December 14, 2005, EPA will hold a public hearing on today's notice at EPA Headquarters, 1310 L Street (closest cross street is 13th Street), 1st floor conference rooms 152 and 154, Washington, DC. The closest Metro stop is McPherson Square (Orange and Blue lines)—take 14th Street/Franklin Square Exit. Because the hearing will be held at a U.S. government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

The hearing will begin at 9 a.m. and end at 12 noon. Persons wishing to speak at the public hearing should contact Jo Ann Allman by December 9 at telephone number (919) 541–1815 or by e-mail at *allman.joann@epa.gov.* The hearing will be limited to the subject matter of this document. Oral testimony will be limited to 5 minutes. The EPA encourages commenters to provide

written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. The public hearing schedule, including the list of speakers, will be posted on EPA's Web site at: *www.epa.gov/cair.* Verbatim transcripts and written statements will be included in the rulemaking docket.

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

Because of the need to resolve the issues in this document in a timely manner, EPA will not grant requests for extensions of the public comment period.

What Should I Consider as I Prepare My Comments for EPA?

Note that general instructions for submitting comments are provided above under the **ADDRESSES** section.

Submitting CBI. Do not submit comments that include CBI to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes 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 docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov*, Attention Docket ID No. OAR–2003–0053.

Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

Availability of Related Information

Documents related to the CAIR are available for inspection in docket OAR–2003–0053 at the address and times given above. The EPA has established a Web site for the CAIR at *http://www.epa.gov/cleanairinterstaterule* or more simply *http://www.epa.gov/cair/*.

Outline

I. Background

On May 12, 2005, the EPA (Agency or we) promulgated the final ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone'' (Clean Air Interstate Rule or CAIR) (70 FR 25162). In this action, EPA found that 28 States and the District of Columbia contribute significantly to nonattainment of, or interfere with maintenance by, downwind States with respect to the NAAQS for fine particles ($PM_{2.5}$) and/or 8-hour ozone. The CAIR requires these upwind States to revise their State implementation plans (SIPs) to include control measures to reduce emissions of SO_2 and/or NO_X. Sulfur dioxide is a precursor to $PM_{2.5}$ formation and NO_X is a precursor to $PM_{2.5}$ and ozone formation. By reducing upwind emissions of SO_2 and NO_X, CAIR will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the NAAQS.

The EPA promulgated the CAIR based on the ''good neighbor'' provision of the Clean Air Act (CAA), section 110(a)(2)(D), which establishes State obligations to address interstate transport of pollution. The EPA conducted extensive air modeling to determine the extent to which emissions from certain upwind States were impacting downwind nonattainment areas. All States found to contribute significantly to downwind $PM_{2.5}$ nonattainment or maintenance problems are included in the CAIR region for $PM_{2.5}$ and are required to reduce annual emissions of SO_2 and NO_X. All States found to contribute significantly to downwind 8-hour ozone nonattainment are included in the CAIR region for ozone and required to reduce NO_X emissions during the 5-month ozone season (May–September). The CAIR establishes regional emission reduction requirements for annual SO_2 and NO_X emissions and seasonal NO_X emissions. The reduction requirements are based on control technologies known to be highly cost effective for electric generating units (EGUs). The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014). The second phase of both SO_2 and NO_X reductions starts in 2015 (covering 2015 and thereafter).

Each State covered by CAIR may independently determine which emission sources to control, and which control measures to adopt. States that choose to base their programs on emissions reductions from EGUs may allow their EGUs to participate in an EPA-administered cap and trade program. The CAIR includes model

rules for multi-State cap and trade programs for annual SO_2 and NO_X emissions, and seasonal NO_X emissions. States may choose to adopt these rules to meet the required emissions reductions in a flexible and highly cost-effective manner. To learn more about the CAIR and its impacts, the reader is encouraged to read the preamble to the CAIR (70 FR 25162; May 10, 2005).

The CAIR was promulgated through a process that involved significant public participation. The EPA published a notice of proposed rulemaking on January 30, 2004 (69 FR 4566) and a notice of supplemental rulemaking on June 10, 2004 (69 FR 32684). The EPA also published a notice of data availability on August 6, 2004 (69 FR 47828). The Agency held public hearings on the January 2004 proposed rule on February 25 and 26, 2004, and an additional hearing on the supplemental proposal on June 3, 2004. In addition, the EPA received thousands of comments on the proposals. We responded to all significant public comments in the preamble to the final rule and the final response to comments document available in the CAIR docket (Docket No. OAR–2003–0053–2172).

Following publication of the final rule on May 12, 2005, the Administrator received eleven petitions requesting reconsideration of certain aspects of the final CAIR. These petitions were filed pursuant to section 307(d)(7)(B) of the CAA. Under this provision, the Administrator is to initiate reconsideration proceedings if the petitioner can show that an objection is of central relevance to the rule and that it was impracticable to raise the objection to the rule within the public comment period or that the grounds for the objection arose after the public comment period but before the time for judicial review had run. The petitions for reconsideration of the CAIR ask EPA to reconsider several specific aspects of the final rule, and many of the petitions make similar requests. This notice addresses four of the issues raised in those petitions. The EPA expects to issue decisions on all remaining issues raised in the petitions for reconsideration by March 15, 2006. The complete petitions are available in the docket for the CAIR.[1]

In addition, fourteen petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia.[2] The fourteen cases have been consolidated into a single case, *State of North Carolina* v. *EPA* (No. 05–1244) (D.C. Cir). Many of the parties who petitioned EPA for reconsideration of the CAIR also petitioned for judicial review of the rule.

By letters dated August 1, 2005, EPA granted reconsideration of the definition of ''electric generating unit'' or ''EGU'' as it relates to solid waste incinerators (and particularly municipal waste incinerators).[3] The EPA explained that the issue would be addressed in the proposed rule signed the same day. That proposed rule, entitled ''Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program; Proposed Rule,'' was published on August 24, 2005 (70 FR 49708). In that proposed rule, EPA reconsidered the definition of ''EGU'' in the final CAIR as it relates to solid waste incinerators (70 FR 49738). We proposed revisions to the definition of ''EGU'' and requested comment on this issue. In that action, we did not address any other issues raised in the petitions for reconsideration of the CAIR. Today's action does not reopen for comment any aspect of the August 24, 2005, proposed rule.

The EPA also received two requests to stay the implementation of the CAIR in limited geographic areas pending resolution of this reconsideration process. One petitioner requested a stay of implementation of the CAIR in the State of Florida, and one petitioner requested a stay of implementation of the CAIR in the State of Minnesota. By letter dated August 1, 2005, EPA declined to stay implementation of the CAIR in Florida.[4] The EPA has not yet acted on the request to stay implementation of the CAIR in Minnesota.

By letters dated November 21, 2005, we informed several petitioners of our intent to grant reconsideration on one or more issues addressed in their petitions for reconsideration. We indicated in those letters that we would initiate the reconsideration process by publishing this notice.

II. Today's Action

A. Grant of Reconsideration

In this notice, EPA is announcing its decision to grant reconsideration on four issues raised in the petitions for reconsideration. This notice initiates that reconsideration process and requests comment on the issues to be addressed. Given the intense public interest in this rule, EPA has decided to provide this additional opportunity for public comment. At this time, however, EPA does not believe that any of the information submitted to date demonstrates that EPA's final decisions were erroneous or inappropriate. Therefore, we are not proposing any modifications to the final CAIR.

The first issue on which EPA is requesting comment relates to analysis done by EPA to address petitioner's claims regarding alleged inequities resulting from the application of the SO_2 allowance allocation methodology that States choosing to participate in the trading program would use to allocate SO_2 allowances to sources. The second issue relates to EPA's use of specific fuel adjustment factors to establish NO_X budgets for each State. The third issue relates to modeling inputs used by EPA to determine whether emissions from Minnesota should be included in the CAIR region for $PM_{2.5}$. And the fourth issue relates to EPA's determination that the State of Florida should be included in the CAIR region for ozone. Each issue is described in greater detail in Section III of this notice.

The EPA is requesting comment only on the issues specifically described in Section III. We are not taking comment on any other provisions in the CAIR or otherwise reopening any other issues decided in the CAIR for reconsideration or comment.

[1] Petitions for reconsideration were filed by: State of North Carolina (OAR–2003–0053–2192); FPL Group OAR–2003–0053–2201); Florida Association of Electric Utilities (OAR–2003–0053–2200); Entergy Corporation (OAR–2003–0053–2195 and 2198 (attachment 1)); Massachusetts Department of Environmental Protection (OAR–2003–0053–2199); Integrated Waste Services Association (OAR–2003–0053–2193); Texas Commision on Environmental Quality (OAR–2003–0053–2212); Northern Indiana Public Service Corporation (OAR–2003–0053–2194 and 2213 (supplemental petition)); City of Amarillo, Texas, El Paso Electric Company, Occidental Permian Ltd, and Southwestern Public Service Company d/b/a/ Xcel Energy (OAR–2003–0053–2196 and 2197 (attachment 1) and 2205–2207 (attachments 2–4)); Connecticut Business and Industry Ass'n (OAR–2003–0053–2203); and Minnesota Power, a division of ALLETE. Inc. (OAR–2003–0053–2212).

[2] *State of North Carolina* v. *EPA* (No. 05–1244); *Minnesota Power* v. *EPA* (No. 05–1246); *ARIPPA* v. *EPA* (No. 05–1249); *South Carolina Public Service Authority et al.* v. *EPA* (No. 05–1250); *Entergy Corp.* v. *EPA* (No. 05–1251); *Florida Ass'n of Electric Utilities* (No. 05–1252); *FPL Group* v. *EPA* (No. 05–1253); *Northern Indiana Public Service Co.* v. *EPA* (No. 05–1254); *South Carolina Electric & Gas Co.* v. *EPA* (No. 05–1256); *Integrated Waste Services Ass'n* v. *EPA* (No. 05–1257); *AES Corp* v. *EPA* (No. 05–1259); *City of Amarillo, Texas et al.* v. *EPA* (No. 05–1260); *Appalachian Mountain Club et al.* v. *EPA* (No. 05–1246); *Duke Energy* v. *EPA* (No. 05–1246).

[3] These letters are available in the CAIR Docket. (OAR–2003–0053–2209 and 2210).

[4] This letter is also available in the CAIR Docket (OAR–2003–0053–2208).

B. Schedule for Reconsideration

For the four issues addressed in this notice, EPA expects to take final action on reconsideration by March 15, 2006. By that date, EPA will finalize the process of reconsideration by issuing a final rule or proposing a new approach. EPA also expects, by March 15, 2006, to issue decisions on all remaining issues raised in the petitions for reconsideration.

III. Discussion of Issues

A. SO_2 Allocation Methodology in the CAIR Model Trading Rules

One petitioner argues that the SO_2 allowance allocation methodology in the CAIR model trading rules is unreasonable and inequitable, and asks EPA to establish a different approach. According to the petitioner, the methodology is inequitable because it results in owners of units that have lower emission rates, historically, buying allowances from historically higher emitting units that install new emission controls. EPA does not accept the petitioner's characterization of this issue. EPA continues to believe that the methodology selected is reasonable for the reasons explained in the final rule and further outlined below. Furthermore, numerous opportunities for public comment on this issue were provided, and a full discussion of the allowance allocation options occurred during the rule development process. Nonetheless, given the intense public interest in this issue, EPA has decided to grant the Petition for Reconsideration insofar as it raises issues regarding alleged inequities resulting from the application of the SO_2 allowance allocation.

As explained below, EPA has conducted additional analyses concerning the impact of the SO_2 allowance allocation approach adopted in the model rules, comparing this approach to various other alternatives considered during the rulemaking process. These analyses further illustrate that the approach selected produces a reasonable result, not the inequities alleged in the Petition for Reconsideration. Therefore EPA is not proposing any changes to the CAIR SO_2 allocation approach as part of this reconsideration notice. We are taking comment on the analyses conducted and our discussion of the petitioner's concerns.

Title IV and CAIR

The CAIR model SO_2 trading program relies on the use of title IV SO_2 allowances for compliance with the allowance-holding requirements of CAIR. Title IV SO_2 allowances have already been allocated on a unit-by-unit basis in perpetuity, based on formulas set forth in section 405 and 406 of title IV, which were implemented through final regulations issued in 1998 (Sec 42 U.S.C. 7651d and 7651e; and 18 CFR 73.10(b)). The statutory formula for SO_2 allocations was generally based on unit data for 1985–1987 and, for some units, data for years up to 1995. For the title IV SO_2 trading program, each allowance authorizes one ton of SO_2 emissions.

For the CAIR SO_2 trading program, SO_2 reductions would be achieved by generally requiring CAIR sources to retire more than one title IV allowance for each ton of their SO_2 emissions for 2010 and thereafter. Specifically, each title IV SO_2 allowance issued for 2009 or earlier would be used for compliance by CAIR sources at a ratio of one allowance per ton of SO_2 emissions and would authorize one ton of SO_2 emissions. Each title IV allowance of vintage 2010 through 2014 would be used for compliance under CAIR at a two-to-one ratio and authorize 0.5 tons of SO_2 emissions. Each title IV allowance of vintage 2015 and later would be used at a 2.86-to-1 ratio and authorize 0.35 tons of SO_2 emissions. See discussion in the preamble to the final CAIR in section VII (70 FR 25255–25273) and section IX (70 FR 25290–25291).

SO_2 Allocation Options in CAIR

A variety of SO_2 allowance allocation methodologies were raised and analyzed during the rulemaking process, including the one EPA selected. Alternative methodologies analyzed included allocating on the basis of historic tonnage emissions, heat input (with alternatives based on heat input from all fossil generation, and heat input from coal- and oil-fired generation only) and output (with alternatives based on all generation and all fossil-fired generation). While every allocation methodology suggested by commenters during the rulemaking process has its advantages and disadvantages for different companies and States, EPA explained in the final rule that its chosen methodology is reasonable on several grounds. First, EPA believes that ''achieving SO_2 reductions for EGUs using the title IV allowances is necessary in order to ensure the preservation of a viable title IV program'' (Response to Comments (RTC) at page 511, section X.A.26, 2005). *See also* discussion in preamble to the final CAIR in section IX (70 FR 25290–25291). Second, in using the title IV allowances, EPA relied on the selection by Congress of the permanent allocation methodology established in title IV for purposes of reducing SO_2 emissions. As stated in the RTC (page 512), ''Congress clearly did not choose a policy to regularly revisit and revise these allocations, believing that its allocations methodology for title IV allowances would be appropriate for future time periods.''

Third, title IV allowance allocations provide a logical and well understood starting point from which additional EGU SO_2 emission reductions can be achieved for Acid Rain units, which account for over 90% of the SO_2 emissions from CAIR EGUs. Finally, EPA's State-by-State analysis of several methods for SO_2 allocations shows that the use of title IV allowances to develop state budgets creates a reasonable result (See RTC, section X.A.26). The policy decision to base the CAIR SO_2 budgets on the existing title IV allowance system, and EPA's demonstration that the result of using the system is reasonable fully support the use of an allocation system based on title IV allowances.

Analysis of SO_2 Allocation Options

As a part of this reconsideration, EPA performed additional analyses, explained below, to evaluate the SO_2 allocation methodology in the final CAIR rule in light of the petitioner's concerns. In these analyses, EPA compared three alternative SO_2 allowance allocation methodologies to the methodology in the final CAIR to see how companies fared in terms of the amount of allowances allocated relative to their projected SO_2 emissions. The allocation allowance methodologies evaluated by EPA were the ones referred to by the petitioner in the Petition for Reconsideration. EPA believes that, for purposes of evaluating the various allocation methodologies, computing allocations on a company-by-company basis is more appropriate than comparing allocations on a unit-by-unit basis. This is because, while one unit could be allocated fewer allowances under one methodology, another unit owned by the same company could be allocated more allowances, which may offset the smaller allocation of the first unit.

The three alternative allowance allocation methodologies EPA analyzed were suggested by various commenters during the rulemaking process. Also note that methodologies 2 and 3 were suggested by the petitioner. These methodologies are:

1. Allocating allowances based on more recent heat input data;

2. Allocating allowances based on more recent heat input data adjusted for fuel type (e.g., coal, oil and gas);

3. Allocating allowances based on more recent heat input data adjusted both for fuel type (e.g., coal, oil and gas) and for coal type (e.g., bituminous, sub-bituminous and lignite).

In comparing the CAIR final SO_2 allocation methodology and the three alternative methodologies, EPA took into account certain factors that are applicable to the CAIR final allocation methodology but not to the three alternative methodologies. For all four methodologies, EPA analyzed the resulting total allowance allocations, and the total projected emissions, for companies' sources located in the States subject to CAIR. In addition, for all the methodologies, EPA analyzed the relationship between allowances and emissions in two ways. In the first, EPA calculated the ratio of allowances to total projected emissions before CAIR controls (base case). This measures how much each company falls short of allowance needs. Then, in the second approach, EPA calculated the ratio of allowances to total projected emissions with CAIR controls installed (control case). This way measures how many allowances a company would need to purchase after controls are installed.

For the CAIR final methodology, EPA also considered both the allowance allocations and emissions for companies' sources both in the CAIR region and outside the CAIR region. EPA believes that this is appropriate because, under the CAIR final methodology, if a company's sources outside the CAIR region have more title IV allowances than needed to cover their emissions under the Acid Rain Program, the company could transfer, at little or no net cost, excess allowances to the company's sources in the CAIR region for use to cover emissions under the CAIR trading program. Under the three alternative methodologies, which would require creating new CAIR SO_2 allowances independent of the existing title IV allocations, CAIR sources could not use title IV for compliance with the CAIR SO_2 allowance holding requirements.

Further, in the analysis of the CAIR final methodology, EPA considered the allocation of title IV allowances to CAIR region units that are not currently in the Acid Rain Program but that could opt into the Acid Rain Program and receive title IV allowances (see 42 U.S.C. 7651i and 18 CFR part 74). This analysis assumed that companies owning non-Acid Rain units affected by CAIR would opt into the Acid Rain Program because they would receive title IV allowances to cover a portion of the unit's emissions under CAIR. EPA believes this assumption is reasonable because there is very little cost associated with opting into the Acid Rain Program.[5] In contrast, the analysis of the three alternative methodologies did not consider Acid Rain Program opt-in allowances because these approaches do not use title IV allowances for CAIR compliance.

EPA's analyses, of which a detailed description is available in the docket, encompassed 112 (control case) to 114 (base case) parent/holding companies with sources covered by the CAIR. These 112 to 114 companies represent about two-thirds of the total number of CAIR plants, over 95 percent of total annual allocations for all methodologies during 2015, and about 97 percent of the total projected emissions in the CAIR region in 2015.[6]

While allocations vary from company to company under the four methodologies, overall, the distributions of allowances that companies received relative to their projected emissions for both the base case and control case are very similar. In other words, no methodology stands out as providing a more reasonable method of allocation across all companies when examining allowance needs under either the base case or control case. Figures 1 and 2, below, show the distribution of values for each methodology under the two cases, and support this conclusion. EPA repeated these analyses for 2010, which show similar results. Separate analyses of owner/operating company allowances compared to emissions in 2010 and 2015, show similar results, as well. *See* TSD Memo, ''Technical Support Document for Clean Air Interstate Rule Response to Petition for Reconsideration.''

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[5] The greatest cost associating with opting in to the title IV program is the cost of monitoring. Since these sources are already required to monitor using the same monitoring methodologies that would be required if they were to opt in, their costs for opting in are significantly reduced.

[6] According to EPA inventory data, there are a total of 921 CAIR affected plants. EPA did not have complete owner, parent company information for all of these plants.

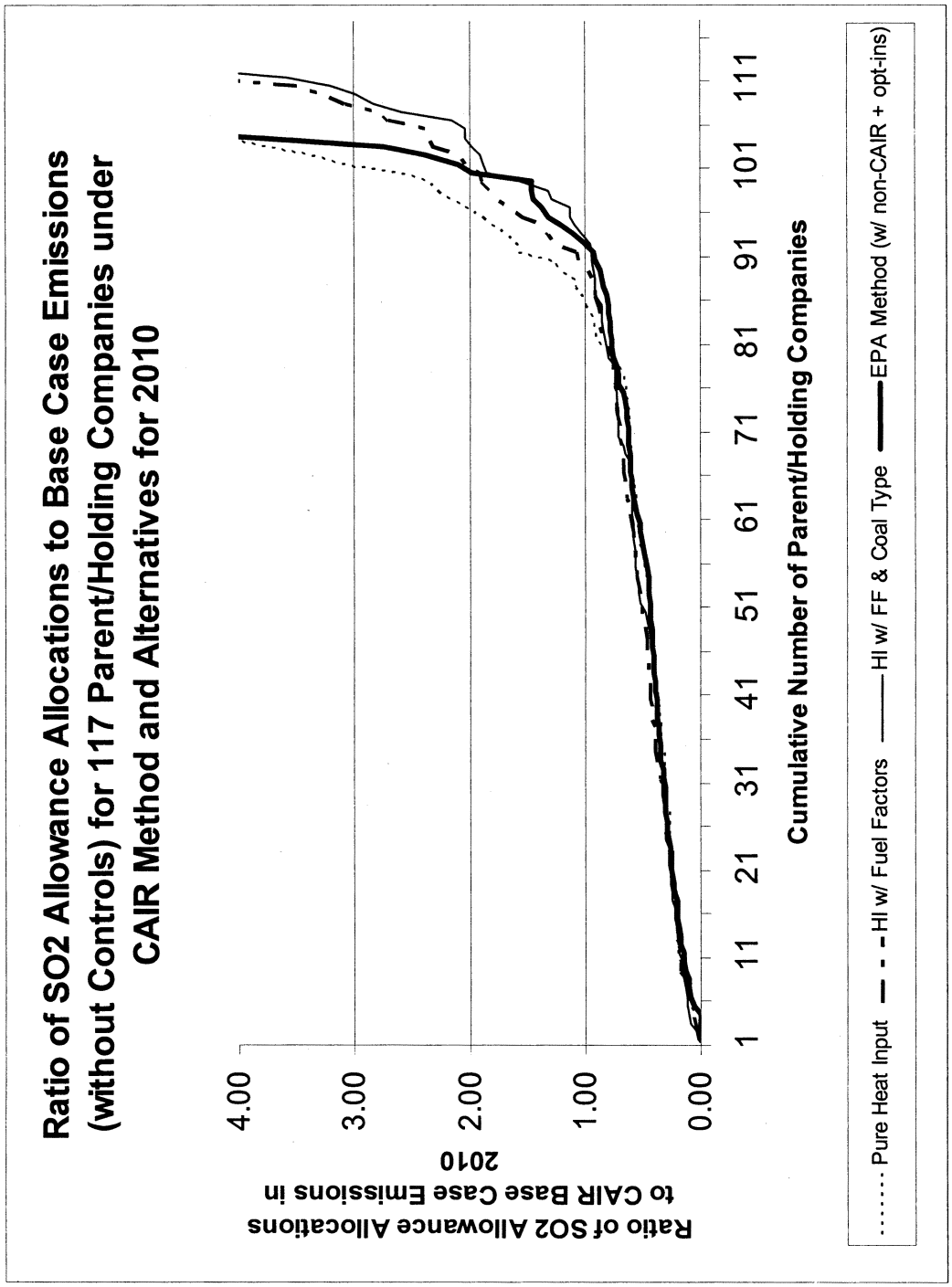

Figure 1. Note: A small number of the companies in the analysis are not shown because they are extreme values -- receiving allocations greater than four times their projected 2010 emissions – and if included, render the figure extremely difficult to understand. See table in the TSD for details.

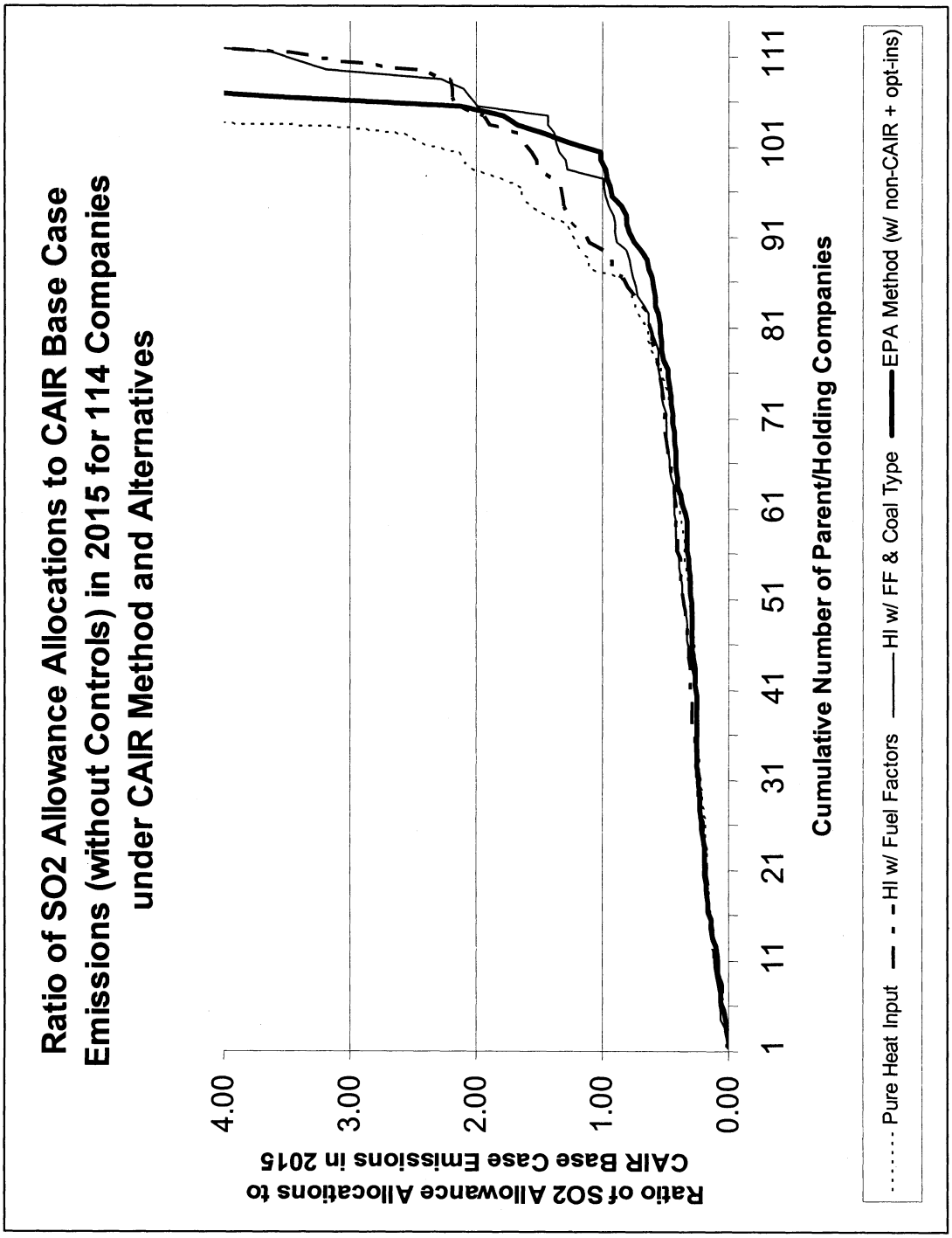

Figure 2. Note: A small number of the companies in the analysis are not shown because they are extreme values -- receiving allocations greater than four times their projected 2015 emissions – and if included, render the figure extremely difficult to understand. See table in the TSD for details.

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EPA also notes that, while the Petitioner states that the CAIR final allocation methodology is ''inequitable'' because lower emitting units would buy allowances from higher emitting units that install emission controls, it is unclear why such a result would actually be inequitable. On the contrary, the owner of each of the units involved would be choosing to adopt the most economic compliance strategy in light of the unit's emission control costs and the market value of allowances. The ability of the owners to make such choices reflects the flexibility provided by a cap and trade program.

The EPA requests comment on its analyses of the four allocation methodologies and on the above discussion of the Petitioner's concerns.

B. Fuel Adjustment Factors Used To Set State NO_X Budgets

Several petitioners argue the Agency did not provide adequate notice regarding the use of specific fuel adjustment factors to establish NO_X budgets for States in the CAIR region. As explained below, EPA believes that it provided adequate notice both that the fuel adjustment factors might be used and of the calculation procedures that it would use to determine the specific factors. Nevertheless, given the significant public interest in this issue, EPA has decided to grant reconsideration of, and to take comment on, EPA's use of fuel adjustment factors (*i.e.*, 1.0 for coal, 0.4 for gas, and 0.6 for fuel oil) in setting State NO_X budgets. Today's action also presents additional analysis that EPA conducted to further explain the impact of these factors on State annual NO_X budgets. This analysis demonstrates that the factors selected are reasonable and decrease the disparity between most States' actual electric generation unit (EGU) emissions and their State NO_X budgets. For that reason, EPA is not proposing any changes to the final CAIR at this time.

The CAIR establishes regional emission budgets for annual NO_X, and seasonal NO_X emissions. These regional budgets are then further divided into State budgets, with a share of each total regional budget allocated to each State in the corresponding CAIR region. States choosing to participate in the trading programs will be able to allocate, to sources in their State, the number of allowances in their budgets. Petitioners challenge the methodology EPA used to establish these State budgets for annual and seasonal NO_X.

Background

For States choosing to participate in the trading program, these budgets determine the number of allowances that could be allocated to sources in that State. In a cap and trade system, however, the methodology used to allocate allowances in any given year would not affect where control technologies are installed.[7] Rather, the determinant would be the cost of adding controls compared to the cost of buying, or the profit from selling, allowances. Controls are expected to be installed where it is relatively less expensive, without regard to which units received the initial allocation of allowances. Further, the total cost to industry of controlling emissions and the total amount of reductions achieved would not be affected by the allocation methodology in a given year (for a permanent system). The allocation method, however, could have financial impacts on individual units and companies. A unit that receives more allocations than it has emissions would get a benefit at the expense of a unit that does not receive enough allocations to cover its emissions. While States choosing to participate in the cap and trade program can determine how to allocate allowances among their units, companies in States whose budgets exceed projected EGU emissions would likely receive a financial benefit while companies in States whose budgets are lower than their EGU emissions would likely incur additional costs. In the absence of other considerations, EPA believes that it is in the public interest to reduce the disparity between the number of allowances in a State budget and total projected State EGU emissions.

Notice of Fuel Factor Use in CAIR Promulgation

In the CAIR notice of proposed rulemaking (NPR), EPA proposed to use the simple heat input method. (69 FR 4566) This approach used the un-adjusted heat input to set budgets based on heat input data from the years 1999 through 2002. EPA proposed to give each State a pro rata share of the regional NO_X budget based on the ratio of its average annual heat input to the regional total average annual heat input.

In the Supplemental Notice of Proposed Rulemaking (SNPR), EPA proposed to supplement and update the data used to calculate the State annual NO_X budgets (69 FR 32684). EPA also described an alternative method that could be used to calculate the budgets—the adjusted heat input (fuel factor) method. This approach, EPA explained, would ''* * * reflect the inherently higher emissions rate of coal-fired plants, and consequently the greater burden on coal plants to control emissions.'' (See 69 FR 32689.) The SNPR further explains ''in contrast to allocations based on historic emissions, the factors would also not penalize coal-fired plants that have already installed pollution controls'' (69 FR 32689). In the SNPR, EPA also described the method that it would use to derive specific fuel factors if this adjusted heat input method was selected. EPA explained, ''States' shares would be determined by the amount of the State heat input, as adjusted, in proportion to the total regional heat input. The factors could be based on average historic emissions rates (in lbs/mmBtu) by fuel type (coal, gas, and oil) for the years 1999–2002'' (69 FR 32689). The SNPR did not identify the specific numeric factors that would be used. EPA received and responded to numerous comments addressing this alternative fuel factor approach. (*See* ''Corrected Response to Significant Public Comments on the Proposed Clean Air Interstate Rule,'' pp. 520–576.)

EPA established State NO_X budgets for the final CAIR using the adjusted heat input method. The specific fuel factors used to adjust heat input data were 1.0 for coal, 0.4 for gas and 0.6 for oil. These factors are based on the average historic NO_X emissions rate for each fuel. They reflect for each fuel, the 1999–2002 average emissions by State summed for the CAIR region, divided by average heat input by fuel by State, summed for the CAIR region (70 FR 25230–25231).

EPA Analyses of Potential Impacts

EPA conducted two analyses to evaluate the potential impact of using the adjusted heat input method versus the simple heat input method on State annual NO_X budgets: one on a regionwide scale and the second on a State-by-State level.

The regionwide analysis of the potential impacts compared regionwide budgets using both approaches (i.e. simple heat input and fuel factor) to the regionwide projected emissions of units fired with that fuel.[8] Regional budgets and emissions, by fuel type, are summarized in Table 1.

[7] A permanent allocation approach, such as the CAIR allocation methodology in the model trading rules, should not affect where controls are installed. This is true regardless of the type of approach used to permanently allocate allowances (e.g., heat input, adjusted heat input, or output). The use of an updating allocation system, on the other hand, could impact future generation behavior.

[8] It should be noted that simple heat input or adjusted heat input are used to set State budgets and do not imply that States would allocate allowances to units in that manner. In the proposal, EPA gives States flexibility in the distribution of allowances.

TABLE 1.—REGIONWIDE COMPARISON OF CAIR ALLOWANCE DISTRIBUTIONS AND EMISSIONS BY FUEL TYPE

[Thousand tons]

	Projected 2009* emissions and allowances			Projected 2015 emissions and allowances		
	Coal	Other fossil**	Total	Coal	Other fossil	Total
Base Case Emissions	2,635	97	2,732	2,650	96	2,746
CAIR Emissions	1,404	99	1,503	1,151	89	1,254
Simple Heat Input Allowances	1,197	308	1,505	998	256	1,254
Fuel Factor Adjusted Allowances	1,349	156	1,505	1,124	130	1,254

* Numeric value is based on 2010 projections.
** Numeric value includes wood and refuse in three States.

Assuming allowancesare often passed through to generation units in the same way that they are apportioned to the States, Table 1 illustrates that under either approach natural gas-fired and other non-coal-fired generation receives more allowances than their projected emissions in both 2009 and 2015 and therefore States with more units of this type receive a greater share of the budget. However, using the fuel factor approach, the disparity between the number of allowances provided and the emissions is less than under the simple heat input method. Table 1 also demonstrates that the majority of emission reductions are made by coal-fired sources. States with more of these types of units receive a greater share of the regional budget under the fuel factor approach (however, the portion of the budget derived from the heat input from these units is still generally smaller than their projected emissions). Therefore, the fuel factor approach generally provides additional allowances to States with large amounts of coal-fired units that are making the investments in emission control measures and technologies. Conversely the simple heat input approach provides more allowances to States with larger amounts of gas-fired units that are not making reductions. Note that under either approach the portion of the State budgets derived from the heat input from the gas-fired units generally exceeds both the historical and the future projected emissions from these units. This finding led EPA to believe that the fuel factor approach better reduced the disparity between projected emissions and State budgets.

EPA conducted a second analysis that examined the potential impacts of the two approaches for developing Statewide budgets (i.e., simple heat input and fuel factor) on a State-by-State basis. This analysis, summarized in Tables 2 and 3 below, shows that States receiving fewer allowances using a fuel factor approach, generally still receive Statewide budgets that are greater than their projected emissions in 2009 and 2015. This results because a substantial portion of their generation portfolio consists of gas-fired sources with generally low NO_X emission levels.

TABLE 2.—COMPARISON OF PROJECTED NO_X MISSIONS AND STATE BUDGETS FOR CAIR STATES NOT DOMINATED BY COAL GENERATION

[Thousand tons]

State		Projected 2009* emissions and budgets			Projected 2015 emissions and budgets		
		Coal	Other fossil	Total	Coal	Other fossil	Total
DC**	Base Case Emissions	0	0	0	0	<1	<1
	CAIR Emissions	0	<1	<1	0	<1	<1
	Simple Heat Input Budget	0	<1	<1	0	<1	<1
	Fuel Factor Adjusted Budget	0	<1	<1	0	<1	<1
LA	Base Case Emissions	45	5	49	45	5	50
	CAIR Emissions	30	4	35	27	5	32
	Simple Heat Input Budget	19	23	42	16	26	42
	Fuel Factor Adjusted Budget	21	14	36	18	12	30
NY	Base Case Emissions	38	7	45	38	6	44
	CAIR Emissions	29	7	36	15	6	21
	Simple Heat Input Budget	19	42	61	16	35	51
	Fuel Factor Adjusted Budget	21	25	46	17	21	38
TX	Base Case Emissions	141	45	186	141	39	179
	CAIR Emissions	122	44	166	122	35	157
	Simple Heat Input Budget	114	118	231	95	98	192
	Fuel Factor Adjusted Budget	128	53	181	106	44	151
MS	Base Case Emissions	36	1	37	36	2	37
	CAIR Emissions	30	1	31	6	2	8
	Simple Heat Input Budget	11	10	21	9	8	18
	Fuel Factor Adjusted Budget	13	5	18	10	4	15
FL	Base Case Emissions	132	19	151	132	18	151
	CAIR Emissions	51	17	69	44	18	61
	Simple Heat Input Budget	58	58	116	48	48	97

TABLE 2.—COMPARISON OF PROJECTED NO_X MISSIONS AND STATE BUDGETS FOR CAIR STATES NOT DOMINATED BY COAL GENERATION—Continued

[Thousand tons]

State		Projected 2009* emissions and budgets			Projected 2015 emissions and budgets		
		Coal	Other fossil	Total	Coal	Other fossil	Total
	Fuel Factor Adjusted Budget	65	34	99	54	28	83

* Numeric value is based on 2010 projections.
** For DC: Projected Base Case emissions are 35 tons in 2015. CAIR Emissions are projected to be 35 tons in both 2009 and 2015. Simple Heat Input budgets are 213 and 178 tons in 2009 and 2015, respectively. Fuel Factor budgets are 144 and 120 tons in 2009 and 2015, respectively.

Table 2 lists those States in the CAIR region that have significant amounts (*i.e.*, 40 percent or greater) of generation sources that combust fossil fuels other than coal. As illustrated by Table 2, DC, FL, LA, MS, NY, and TX, while receiving fewer allowances under a fuel factor approach, are provided with reasonable Statewide budgets that are comparable to their projected emissions in 2009 and 2015. If the States were to directly pass through allowances to their gas-fired units, these units would still have excess allowances. Furthermore in most cases, these States still receive a larger budget than they need to cover their projected emissions.

TABLE 3.—COMPARISON OF PROJECTED NO_X EMISSIONS AND STATE BUDGETS FOR CAIR STATES

[Thousand tons]

State	Projected 2009* emissions and budgets					Projected 2015 emissions and budgets				
	Emissions		Budget			Emissions		Budget		
	Base case	CAIR	Simple heat input	Fuel factor adjusted	Percent change	Base case	CAIR	Simple heat input	Fuel factor adjusted	Percent change
DC**	0	<1	<1	<1	−32	<1	<1	<1	<1	−33
LA	49	35	50	36	−29	50	32	42	30	−29
NY	45	36	61	46	−25	44	21	51	38	−25
TX	186	166	231	181	−22	179	157	192	151	−22
MS	37	31	21	18	−16	37	8	18	15	−16
FL	151	69	116	99	−14	151	61	97	83	−14
MI	117	88	64	65	3	120	90	53	54	3
MD	57	13	27	28	4	57	12	22	23	4
VA	68	43	35	36	5	60	39	29	30	5
AL	132	65	64	69	8	134	49	53	58	8
GA	143	106	61	66	9	141	67	51	55	9
IL	146	66	70	76	9	159	65	58	64	9
WI	71	47	37	41	9	69	34	31	34	9
PA	198	86	90	99	10	193	72	75	83	10
SC	49	38	30	33	10	50	36	25	27	10
MO	116	64	54	60	10	118	66	45	50	10
MN	72	36	28	31	11	74	37	24	26	11
NC	60	59	56	62	11	61	49	47	52	11
IN	234	121	98	109	11	233	79	81	91	11
OH	264	91	97	109	12	274	90	81	91	12
TN	106	37	46	51	12	106	27	38	42	12
KY	176	99	74	83	12	176	74	62	69	12
IA	76	45	29	33	12	81	47	24	27	12
WV	179	62	66	74	13	176	40	55	62	13
Total	2732	1503	1505	1505	0	2746	1254	1254	1254	0

* Numeric value is based on 2010 projections.
** For DC: Projected ** Base Case emissions are 35 tons in 2015. CAIR Emissions are projected to be 35 tons in both 2009 and 2015. Simple Heat Input budgets are 213 and 178 tons in 2009 and 2015, respectively. Fuel Factor budgets are 144 and 120 tons in 2009 and 2015, respectively.

Table 3 shows that relative to the simple heat input method the fuel factor method reduces the disparity between projected State emissions and State budgets, because the fuel factor approach allocates State budgets that are generally closer to projected State emissions. As explained above, the States that receive smaller budgets under the fuel factor method are still generally receiving budgets that exceed their projected emissions. States that receive larger budgets under the fuel factor method are generally States with a large amount of coal-fired generation that are installing post combustion controls as a result of CAIR.

Analysis of Potential Delaware and New Jersey Impacts

The analyses described above were conducted for the States in the CAIR $PM_{2.5}$ region only. EPA has proposed to add Delaware and New Jersey to the CAIR region for $PM_{2.5}$ (''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule'', EPA, May 10, 2005), but has not yet taken final action on this proposal. EPA proposed a separate 2-State ''regional'' budget for Delaware and New Jersey of just over 14,000 tons. EPA's analysis, presented in Table 4, shows that apportioning this budget between the two States based on a fuel factor method instead of a simple heat input method, is reasonable. (''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule'', EPA, May 10, 2005)

TABLE 4.—COMPARISON OF PROJECTED NO_X EMISSIONS AND STATE BUDGETS FOR NEW JERSEY AND DELAWARE

[Thousand tons]

State	Projected 2009* emissions and allowance allocation					Projected 2015 emissions and allowance allocation				
	Base case emissions	CAIR emissions	Simple heat input budget	Fuel factor adjusted budget	Percent change	Base case emissions	CAIR emissions	Simple heat input budget	Fuel factor adjusted budget	Percent change
NJ	16.8	12.0	13.4	12.7	−5.6	17.9	12.8	11.2	10.6	−5.6
DE	9.4	8.5	3.4	4.2	22.1	10.7	9.5	2.8	3.5	22.2

*Numeric value is based on 2010 projections.

Other Considerations

EPA notes that the analyses above were conducted for State annual NO_X budgets established in the CAIR. CAIR also establishes seasonal NO_X budgets using the fuel factor approach. EPA did not conduct a similar analysis of the seasonal NO_X budgets. EPA modeling indicates that the ozone season program is likely to function as a backstop to the annual NO_X program, and that the annual NO_X program is likely to impose the binding constraint on NO_X emissions.

Finally, to ensure that our estimates appropriately reflect the distribution of emissions in the case of higher electricity demand and increased gas and oil prices, EPA conducted a sensitivity run using EIA's forecast of higher electricity demand and gas and oil prices. This run produced very similar emissions results to the original NO_X analysis, showing that EPA's original analysis is robust enough to support the fuel adjusted heat input approach finalized in CAIR. (See the ''CAIR Statewide NO_X Budget Calculations Technical Support Document, EPA 2005, for additional discussion of the analysis.)

C. $PM_{2.5}$ Modeling for Minnesota

One petitioner asserts that EPA's modeling to determine whether emissions from Minnesota significantly contribute to downwind nonattainment of the $PM_{2.5}$ NAAQS failed to take into account certain emissions reductions required by State programs. The petitioner asserts that if these reductions had been properly included in the modeling done for CAIR, the modeling might show that the State of Minnesota does not significantly contribute to downwind nonattainment of the $PM_{2.5}$ NAAQS. The petitioner also asked EPA to stay implementation of the CAIR in Minnesota. The Agency is not taking action on the request for a stay at this time.

The Agency agrees that EPA's modeling of the contribution of emissions from Minnesota to downwind $PM_{2.5}$ nonattainment for the final CAIR did not fully account for the effects on future year emissions of certain State control programs. In order to ensure that all parties have ample opportunity to comment on all aspects of this issue, EPA is reconsidering the air quality modeling inputs for Minnesota.

Using the corrected inputs described below, EPA recently remodeled the $PM_{2.5}$ contributions from emissions in Minnesota. In this analysis, EPA used the same $PM_{2.5}$ modeling platform that was used for the final CAIR modeling. This modeling platform is described in the CAIR Air Quality Modeling Technical Support Document (''Technical Support Document for the Final Clean Air Interstate Rule, Air Quality Modeling,'' March 2005, OAR–2003–0053–2123). The EPA is not taking comment on the modeling platform itself, only on the corrected 2010 emissions inputs for Minnesota, as described below.

The result of the revised 2010 Minnesota $PM_{2.5}$ contribution modeling is that Minnesota contributes a maximum of 0.20 $\mu g/m^3$ to $PM_{2.5}$ nonattainment in Chicago, IL. This result confirms the findings from the CAIR $PM_{2.5}$ contribution modeling that emissions in Minnesota make a significant contribution to $PM_{2.5}$ nonattainment in Chicago, IL. The 2010 emissions inputs used in the revised Minnesota modeling and the revised contributions to each downwind nonattainment receptor county can be found in the CAIR docket.

The following discussion provides background on the corrected emissions inputs for Minnesota and on air quality analyses that the Agency conducted prior to finalizing CAIR.

The emissions for the electric power sector used in EPA's contribution modeling for the final CAIR were derived from the Integrated Planning Model (IPM). The IPM is designed to forecast the projected impact of environmental polices on the electric power sector. The Agency updated its IPM modeling for the final CAIR. As part of a routine model update to the IPM and in response to comments from various parties, EPA updated the inventory of EGUs, made revisions to several model assumptions, and added various State rules, regulations, and New Source Review settlements to best reflect available data and information.

In that IPM update for the final CAIR, the Agency included emission reduction actions that are required by Minnesota for certain units, based on the data available. However, as discussed in the RTC for the final CAIR (''Corrected Response to Significant Public Comments on the Proposed Clean Air Interstate Rule,'' March 2005, corrected April 2005, OAR–2003–0053–2172) as well as in a memorandum to the CAIR docket entitled ''Emissions in Minnesota: Additional Analysis'' (OAR–2003–0053–2091) (''Minnesota memorandum''), the Agency discovered that there may be some discrepancies between how the Agency represented the Minnesota emissions reductions in the final CAIR IPM update and how the reductions would be implemented. The Agency revised its IPM model to better reflect the emissions reductions from

those Minnesota units and conducted revised emissions modeling using the IPM (in the memorandum mentioned above, the revised emissions modeling is described as a sensitivity analysis.) The revised emissions modeling (sensitivity analysis) resulted in somewhat lower NO_X and SO_2 emission projections for Minnesota in the base case, compared to the emissions modeling done for the final CAIR. The revised emissions modeling was discussed in the RTC for the final CAIR and in the Minnesota memorandum.

Specifically, that revised IPM modeling projects statewide utility NO_X emissions roughly 16,500 tons lower and SO_2 emissions about 5,800 tons lower than the emissions modeling used in the final CAIR. These revised NO_X and SO_2 emission projections result in lower total NO_X and SO_2 emissions of 4.6 percent and 4.3 percent, respectively, than the emission projections used in the final CAIR modeling. In order to account for these revised emission projections, the Agency performed two analyses to estimate whether air quality modeling based on the lower emission projections would show that Minnesota's downwind contribution was below the $PM_{2.5}$ significance threshold of 0.2 $\mu g/m^3$. The EPA's modeling of Minnesota for the final CAIR showed that Minnesota's maximum downwind contribution is 0.21 μ/m^3 to Cook County, Illinois. The Agency's analyses of the effects of the lower emission projections on Minnesota's maximum contribution, which were presented in the RTC for the final CAIR and the Minnesota Memorandum, are summarized below:

- Analysis 1: We reduced the maximum $PM_{2.5}$ contribution by the larger of the percent reduction in NO_X and SO_2 emissions (*i.e.*, the 4.6 percent reduction in NO_X). The maximum $PM_{2.5}$ contribution after making this adjustment is 0.2 $\mu g/m^3$.
- Analysis 2: We reduced the sulfate and nitrate portions of the maximum $PM_{2.5}$ contribution by the corresponding reductions in SO_2 and NO_X emissions. Specifically, the sulfate portion (including sulfate, ammonium, and particle-bound water) was reduced by the 4.3 percent reduction in SO_2 emissions and the nitrate portion was reduced by the 4.6 percent reduction in NO_X emissions. We then recalculated the maximum contribution using these lower components. The result is that the adjusted maximum $PM_{2.5}$ contribution is 0.2 $\mu g/m^3$.

Thus, the analyses presented in the RTC and the Minnesota memorandum indicate that Minnesota makes a significant contribution to $PM_{2.5}$ nonattainment, even after considering the lower emissions levels in the revised emissions modeling.[9]

Although the Agency's analyses of downwind impacts from Minnesota which were based on the revised emissions modeling (and presented in the RTC and the Minnesota memorandum) indicate that the State makes a significant contribution to downwind $PM_{2.5}$ nonattainment, the Agency acknowledges that it did not at that time conduct air quality modeling based on the revised emissions modeling. However, as discussed above, the Agency has now remodeled the $PM_{2.5}$ contribution from emissions in Minnesota and the results of that revised modeling confirm that emissions in Minnesota make a significant contribution to $PM_{2.5}$ nonattainment in Chicago, IL. This revised $PM_{2.5}$ contribution modeling used the same modeling platform as EPA used for the final CAIR modeling coupled with the revised emissions inputs for Minnesota discussed above. The EPA is taking comment only on the revised inputs for Minnesota discussed above.

D. Inclusion of Florida in the CAIR Region for Ozone

Florida petitioners (the Florida Association of Electric Utilities and FPL Group) maintain that neither the proposed rule nor the supplemental proposal or notice of additional data availability gave adequate notice that Florida might be included within the CAIR region as a significant contributor for ozone. They further maintain that EPA's ultimate determination to include Florida within the ozone CAIR region was based on modeling inputs not readily available for comment. The petitioners state that they therefore lacked adequate opportunity to comment on this issue.

The EPA does not fully accept the Florida petitioners' characterization. Clearly, for example, EPA gave notice that it would utilize a different modeling platform for the final rule, with the necessary implication that this could change the makeup of the CAIR ozone (and $PM_{2.5}$) regions (69 FR 47828; August 6, 2004). The EPA also provided access to the data inputs for the modeling runs, including emissions data and the information necessary to process that emissions data into model-ready files. Nonetheless, considering all the factors here (notably the absence of Florida from the CAIR region for ozone in the NPR and SNPR), EPA has decided to provide an opportunity for additional public comment on the inclusion of Florida within the CAIR region for ozone.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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, OMB has determined that this is not a significant regulatory action. This notice takes comment on several aspects of the CAIR, but does not propose any modifications.

B. Paperwork Reduction Act

This action does not propose information collection request requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Therefore, an information collection request document is not required.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose

[9] Although the petition acknowledges that the Agency revised its IPM emissions analysis to reflect emission reductions at certain Minnesota units, it states incorrectly that ''EPA subsequently learned that emission levels in the IPM sensitivity analysis were overstated by an additional 16,500 tons of annual NO_X emissions and 5,800 tons of annual SO_2 emissions'' (petition, p. 7). As discussed above, the emission projections in EPA's revised IPM modeling (the sensitivity analysis) were in fact lower by 16,500 tons of annual NO_X emissions and 5,800 tons of SO_2 emissions than the emission projections in EPA's modeling for the final CAIR. For the same reason, the petition is incorrect in stating (p. 7) that EAP failed to consider these emission reductions in its analysis.

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 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 rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR part 121.); (2) a 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. This notice does not impose any requirements on small entities. We are only announcing our decision to reconsider and request comment on specific issues in the CAIR. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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, UMRA section 205 generally requires 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's 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 notice of reconsideration 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. Today's notice of reconsideration of the CAIR does not add new requirements that would increase the cost of the CAIR. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice of reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to section 203 of the UMRA.

E. 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.''

This action does not have federalism implications. It would 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 CAA establishes the relationship between the Federal Government and the States, and this action would not impact that relationship. Thus, Executive Order 13132 does not apply to this action.

F. 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 9, 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.''

For the same reasons stated in the final CAIR, today's notice does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a federally-enforceable air quality management program under the CAA at this time. Furthermore, this action does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and today's notice does nothing to modify that relationship. Because this notice does

not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal implementation plan, the CAIR could have implications for that Tribe, but it would not impose substantial direct costs upon the Tribe, nor would it preempt Tribal Law.

Although Executive Order 13175 does not apply to the CAIR or this notice of reconsideration of the CAIR, EPA consulted with Tribal officials in developing the CAIR.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This notice is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the CAIR will further improve air quality and children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking (1)(i) a significant regulatory action under Executive Order 12866 or any successor order, and (ii) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) designated by the Administrator of the Office of Information and Regulatory Affairs as a ''significant energy action.'' The final CAIR is a significant regulatory action under Executive Order 12866, and EPA concluded that the final CAIR rule may have a significant adverse effect on the supply, distribution, or use of energy. The impacts are detailed in the final CAIR (70 FR 25315). Today's notice of reconsideration of the CAIR is not a significant action under Executive Order 12866 and does not change EPA's previous conclusions.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The National Technology Transfer Advancement Act of 1995 directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's notice does not involve technical standards. Therefore, the National Technology Transfer and Advancement Act of 1995 does not apply.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,[10] agencies are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that ''appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998).

In accordance with Executive Order 12898, the Agency has considered whether the CAIR may have disproportionate negative impacts on minority or low-income populations. The EPA expects the CAIR to lead to reductions in air pollution and exposures generally. Therefore, EPA concluded that negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected. For the same reasons, EPA is drawing the same conclusion for today's notice to reconsider certain aspects of the CAIR.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 96

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: November 22, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–23501 Filed 12–1–05; 8:45 am]

BILLING CODE 6560–50–P

[10] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

Notices

Federal Register
Vol. 70, No. 231
Friday, December 2, 2005

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

Submission for OMB Review; Comment Request

November 28, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: National Survey on Recreation and the Environment 2005.

OMB Control Number: 0596–0127.

Summary of Collection: The Forest Service (FS) is revising this information collection due to more sponsors requesting the use of the National Survey on Recreation and the Environment (NSRE) for their government research needs, additional modules by the Environmental Protection Agency (EPA), United States Coast Guard, and FS have been included. Federal land managing agencies are responsible for the management of over 650 million acres of public lands. These lands are managed according to the legislation and overall mission pertaining to each agency. To manage well and wisely, knowledge of recreation demands, opinions, preferences and attitudes regarding the management of these lands is imperative. The survey will be administered using a statistically valid sampling methodology through computer-assisted telephone interviewing techniques.

Need and Use of the Information: FS will collect information nationally from the public to assess trends in recreation participation over the years since the survey was last conducted and to estimate demand for outdoor recreation among the U.S. population. In addition, the survey will collect information from the public on people's attitudes and values toward natural resources and their management. FS will use the information as well as other Federal agencies to develop long-range strategic plans, adjust programs and activities to meet customer needs and expectations, and better manage federally owned lands.

Description of Respondents: Individuals or households.

Number of Respondents: 76,966.

Frequency of Responses: Reporting: Other (one time) .

Total Burden Hours: 4,915.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E5–6748 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Center for Nutrition Policy and Promotion

Agency Information Collection Activities; Proposed Collection; Comment Request—MyPyramid Tracker Information Collection for Registration, Login, and Food Intake and Physical Activity Assessment Information

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This notice announces the Center for Nutrition Policy and Promotion's (CNPP) intention to request the Office of Management and Budget approval of the information collection process to be used in MyPyramid Tracker, an on-line dietary and physical activity self-assessment tool. The information collected can only be accessed by the user and will not be available to CNPP or any other public agency for purposes of evaluation or identification. Formative evaluation conducted among college students will be performed prior to any new Web site enhancements released to the public.

DATES: Written comments on this notice must be submitted on or before January 31, 2006.

ADDRESSES: Comments may be sent to P. Peter Basiotis, Director, Nutrition Policy and Analysis, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, Virginia, 22302. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) 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.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Wen Yen Juan, (703) 605–4437.

SUPPLEMENTARY INFORMATION:

Title: MyPyramid Tracker Information Collection for Registration, Login and Food Intake and Physical Activity Assessment.

OMB Number: Not yet assigned.

Expiration Date: Not applicable.

Type of Request: This is a new collection of information.

Abstract: MyPyramid Tracker (*http://www.mypyramidtracker.gov*) is an Internet based diet and physical activity self-assessment tool. It translates scientifically based guidance into practical information and promotes nutrition education by increasing awareness of the quality of a person's diet. It allows users to input their daily food intakes and physical activity information and provides a quick summary measure of overall daily diet quality, activity status, and energy balance between 'energy in' and 'energy out' in terms of current guidance, which can be tracked for up to one year. Motivational education messages are generated and tailored to the user's personal assessment results. This data collection will be ongoing. The information collected will only be accessible by the user. Formative evaluation of functionalities and content of the Web site will be conducted with college students in collaboration with various universities. Testing will be completed prior to the release of any newly developed Web site enhancements to the general public.

Affected Public: American Consumers.

Estimated Number of Respondents: It has been established through MyPyramid Tracker activity over the past 4 months, that an estimated 75,000 (average per month) new account registrants and 72,349 active users (average per month) have entered food and physical activity data for at least one day. From the active users it is estimated that approximately 1% will continue to use the Tracker on a daily basis for up to one year. This would equate to approximately 725 repeat users each month who would visit the site on a daily basis for up to 1 year. We are estimating that there will be 900,000 respondents for registration, login and one-time users yearly. For repeat users we estimate there will be 8,700 respondents, who will take advantage of daily food and physical activity assessments for up to one year. The number of subjects to be included in formative evaluation is estimated to be about 300 college students, who will be using the same login process for 3-days of food intake and physical activity data.

Estimated Time per Response:

1 minute for registration.

.5 minutes for login.

30 minutes for food and physical activity data entry for one-day.

	Respondents	Burden minutes	Burden hours
Interaction for Genral Public:			
One Time Registration	900,000	1	15,000
One Time Log-in	900,000	.5	7,500
Food/Physical Activity Data Entry for 1 Day	900,000	30 = 27,000,000	450,000
Repeat Log-ins for 1 Year	8,700	.5 × 364 days = 1,583,400	26,390
Repeat Food/Physical Activity Data Entries for 1 Year	8,700	30 × 364 days = 95,004,000	1,583,400
Subtotal			2,082,290
Interaction for Subjects in the Formative Evaluation:			
One Time Registration	300	1	5
One Time Log-in	300	.5	2.5
Food/Physical Activity Data Entry for 1 Day	300	30 = 9,000	150
Repeat Log-ins for 3 days	300	.5 × 3 days = 450	7.5
Repeat Food/Physical Activity Data Entries for 3 days	300	30 × 3 days = 27,000	450
Subtotal			615

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 2,082,905 hours.

Dated: November 23, 2005.

Eric J. Hentges,

Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. E5–6758 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs ensure meaningful distinctions in performance as they review Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture regarding final performance ratings, performance awards, salary, and Presidential Rank Awards for SES members.

DATES: *Effective:* December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Planning, Coordination and Executive Resources Staff, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–2101.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRB's will be constituted.

Aldaya, George W.
Allen, Lindsay H.
Allen, Lynn
Allen, Richard D.
Alsop, James C.
Anderson, Curtis M.
Anderson, Byron E.
Arnette, Donald E.
Ashworth, Warren R.
Bails, Constance T.

Bange, Gerald A.
Barnes, Darlene L.
Bartuska, Ann M.
Bartz, Merlin E.
Bass, Robert T.
Basu, Arun C.
Bech, Rebecca A.
Betschart, Antoinette A.
Bianchi, Ronald F.
Blackburn, Wilbert H.
Billet, Courtney R.
Blum, J. Lawrence
Bohman, Mary E.
Bosecker, Raymond R.
Bost, Eric M.
Bosworth, Dale N.
Boteler, Franklin E.
Braasch, Sara J.
Bradley, James
Brady, Terence M.
Braley, George A.
Brennan, Deborah L.
Brenner, Richard J.
Brewer, John G.
Brouha, Paul
Brown, Charles S.
Brown, J. Kevin
Bryant, Arthur Ray
Bschor, Dennis E.
Bumbary-Langston, Inga P.
Butler, James G.
Butler, Larry D.
Buxton, Dwayne R.
Cables, Rick D.
Carey, Priscilla B.
Carlson, Merlyn E.
Carpenter, Barry L.
Carter, Clarence H.
Chadwick, Kristine M.
Chambliss, Mary T.
Chandler, Laurence D.
Cherry, John P.
Christensen, Steven N.
Christensen, Thomas W.
Cielo, Angel B.
Clark, Lawrence E.
Clay, William H.
Clayton, Kenneth C.
Cleaves, David A.
Clifford, John R.
Coale, Dana Hamilton
Cohen, Kenneth E.
Cole, Darrell F.
Coler, Katherine Anne
Collins, Keith J.
Collins, Sarah D.
Collins, Wanda W.
Conklin, Neilson C.
Connaughton, Kent P.
Connelly, Steven A.
Conner, Charles F.
Conway, Roger K.
Conway, Thomas
Cooksie, Carolyn B.
Coombe, Richard I.
Cooper, George E.
Coppedge, James R.
Cunningham, Gary L.
Dantzler, Marshall L.
Davidson Jr., Ross J.
Davis, Russell T.
Day, Lloyd C.
Deberry, Drew A.
Dehaven, William R.
Derfler, Philip S.
Diaz-Soltero, Hilda
Dick, Jere L.
Diez, Jose R.
Dorr, Thomas C.
Dubey, Anne M.
Dunkle, Richard L.
Earnest, Darryl W.
Eav, Bov Bang
Ebaugh, Mary L.
Eggert, Paul R.
Elias, Thomas S.
Ellis, Karen L.
Engeljohn, Daniel L.
Epstein, Robert L.
Estill, Elizabeth
Evans, Marlane T.
Farrish, Hubert O.
Fiala, Patricia K.
Fong, Phyllis K.
Forsgren II, Harvey L.
Frago, Douglas W.
Frost, Alberta C.
Gaibler, Floyd D.
Garbarino, Joseph S.
Gause, Kathleen M.
Gelburd, Diane E.
Gipsman, Jack
Gipson, Chester A.
Gleason, Jackie Jay
Golden, Micheal L.
Golden, John
Gomez, Christopher A.
Gonzalez, Gilbert
Goodman, Linda D.
Gordh, Gordon
Grahn, David P.
Granger, Larry M.
Gray, David R.
Green, Alan S.
Gregoire, Michael C.
Gugulis, Katherine C.
Guldin, Richard W.
Gutierrez, Gloria
Haggstrom, Glenn D.
Hagy III, William F.
Hamer Jr., Hubert
Hammond, Andrew C.
Hanan, Tamara L.
Hannah, Thomas E.
Hanuschak, George A.
Harbour Jr., Thomas C.
Hawk, Gilbert R.
Hawks, William
Hazuda, Mark J.
Healy, Patricia E.
Hefferan, Colien J.
Hentges, Eric J.
Hewings, Adrianna D.
Hicks, Ronald F.
Hill, Richard E.
Hill, Ronald W.
Hinton-Henry, Annie S.
Hobbie, Mary K.
Hobbs, Alma C.
Hoffeller, Thomas B.
Hohenstein, William G.
Holden, Ollice C.
Holladay, Jon M.
Holman, Pred Dwight
Holtrop, Joel D.
Hood, Rodney E.
Hooper, Ronald E.
House, James E.
House, Carol C.
Hudnall Jr., William J.
Jackson, Ruthie F.
Jackson, Vicki A.
Jackson, Yvette S.
Jacobson, Julie A.
James, William O.
Jen, Joseph
Jennings, Allen L.
Jett, Carole E.
Johnsen, Peter B.
Johnson, Allan R.
Johnson, John A.
Johnson, Elizabeth K.
Johnson, Phyllis E.
Jordan, Leonard
Jordan, John P.
Kaiser, Janette S.
Kaplan, David T.
Kaplan, Dennis L.
Kappes, Steven M.
Kashdan, Hank
Keeney, Robert C.
Kelly, James Michael
Kimbell, Abigail R.
King, Jesse L.
King Jr., Edgar G.
Knight, Bruce I.
Knipling, Edward B.
Koohmaraie, Mohammad
Korcak, Ronald F.
Kugler, Daniel E.
Kuhn, Betsey A.
Lambert, Charles D.
Lancaster, Arlen L.
Lange, Loren D.
Lapoint, Tracy A.
Lawrence, Douglas J.
Leaman, Samuel R.
Leland, Arlean
Levings, Randall
Lewis, David N.
Lilja, Janice Grassmuck
Linden, Ralph A.
Lindsay, Jerome A.
Little, James R.
Lohfink, Cyrus G.
Ludwig, William E.
Lugo, Ariel E.
Maczka, Carol A.
Maloney, Kathryn P.
Mangold, Robert D.
Mann, Curt J.
Manning, Gloria
Maresch, Wayne M.
Marlow, Ronald L.
Martinez, Wilda H.
Masters, Barbara J.
Maupin, Gary T.

Mazie, Sara M.
McCaskey, Patrick C.
McClanahan, Melinda L.
McPhail-Gray, Mary
Mendoza Jr., Martin
Messmore, Karen
Mezainis, Valdis E.
Miller, W. Kirk
Millet, Thomas W.
Milton Jr., William P.
Moore, Dale W.
Moore, Randy
Moore, Terri M.
Morgan, Andrea M.
Morgan, Gary J.
Morris, Craig A.
Munno, Joanne L.
Murrin, Suzanne M.
Myers, Jaqueline
Myers Jr., Charles L.
Narang, Sudhir K.
Nealon, John Patrick
Neruda, Michael E.
Newby, James
Newman, Corbin L.
Ng, Allen
Niedermayer, Chris S.
Norbury, Frederick L.
O'Connor, Thomas J.
Offutt, Susan E.
Onstad, Charles A.
Orr, David M.
Otto, Ralph A.
Palmisano, Anna
Parham, Gregory L.
Parker, Vernon B.
Patton-Mallory, Marcia
Payne, Larry R.
Penn, J.B.
Petersen, Kenneth E.
Pierson, Merle D.
Poling, Janet A.
Prucha, John C.
Puckett, William E.
Purcell, Roberta D.
Pyron, Christopher L.
Quick, Bryce R.
Quigley, Thomas M.
Rains, Michael T.
Raymond, Richard A.
Reaves, Jimmy L.
Reed, Craig A.
Reifschneider, Donna L.
Reilly, Joseph T.
Rexroad Jr., Caird E.
Rey, Mark E.
Riemenschneider, Robert A.
Riggins, Judith W.
Risbrudt, Christopher D.
Roberts, Richard K.
Robinson, Barbara C.
Romero, Annabelle
Roth, Jane E.
Roussopoulos, Peter J.
Rouzer, David C.
Rundle, Kathleen A.
Salazar, Roberto
Santiago, Perfecto R.
Scarbrough, Frank
Schaub, James D.
Sedell, James R.
Seiber, James N.
Sexton, Thomas J.
Shafer, Steven R.
Shahin, Jessica H.
Sharp, Audrey Diane
Shea, Anthony Kevin
Sheikh, Patricia R.
Shelton, Stuart L.
Shere, Jack A.
Shipman, David R.
Silverman, Steven C.
Smith, Katherine R.
Smith, Cynthia J.
Smith, Gregory C.
Smith Jr., William C.
Snow, Wendy E.
Sommers, Michael J.
Spence, Joseph
St. John, Judith B.
Steele, W. Scott
Stokes, E. Vaughn
Stouder, Deanna J.
Stuck, Karen D.
Surina, John C.
Swacina, Linda
Swenson, Richard D.
Taitano, Dennis J.
Tanner, Steven N.
Taylor Jr., Clifton J.
Tenny, David P.
Terpstra, A. Ellen
Thiermann, Alejandro B.
Thomas, Peter Jon
Thomas, Irving W.
Thomas, Peter Jon
Thompson, Clyde
Thompson, Robin L.
Troyer, Jack G.
True, Sadhna G.
Underwood Jr., Marvin M.
Vail, Kenneth H.
Villano, David J.
Vogel, Ronald J.
Wachs, Lawrence
Wallace, Charles L.
Walsh, Thomas E.
Walton, Thomas M.
Waterfield, Joann
Weingardt, Bernard
White, John S.
Whitmore, Charles
Whung, Pai Yei
Williams, Jerry E.
Williams, John W.
Witt, Timothy Blaine
Wiyatt, Steven D.
Woods, Mark R.
Worthington, Ruth M.
Yonts-Shepard, Susan E.
York, Dana D.
Yost, Michael W.
Young, Michael Lee
Young, Peter
Young Jr., Robert W.
Zimmerman, Anne J.
Zorn, Frances E.

Dated: November 4, 2005.

Mike Johanns,

Secretary.

[FR Doc. 05–23565 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–96–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TM–06–02]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice Inviting Proposals for fiscal year (FY) 2006 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given for proposals for FY 2006 grant funds under the Federal-State Marketing Improvement Program (FSMIP). FSMIP anticipates that approximately $1.3 million will be available for support of this program in FY 2006. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry groups, academia, and community-based organizations in the development of proposals and the conduct of projects.

DATES: Funds will be allocated on the basis of one round of consideration. Proposals will be accepted through February 10, 2006.

ADDRESSES: Proposals may be sent to: FSMIP, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4009 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FSMIP Staff Officer, (202) 720–8043.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis to assist State Departments of Agriculture or other appropriate State agencies in conducting studies or developing innovative approaches related to the marketing of U.S. food and agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Proposals are submitted by the State Agency and must be accompanied by completed Standard Forms (SF) 424 and 424A. AMS will not approve the use of FSMIP funds for advertising or, with limited exceptions, for the purchase of equipment. Detailed program guidelines may be obtained from your State Department of Agriculture, the above AMS contact, or the FSMIP Web site: *http://www.ams.usda.gov/tmd/fsmip.htm.*

FSMIP funds a wide range of applied research projects that address barriers, challenges, and opportunities in marketing, transportation, and distribution of U.S. food and agricultural products domestically and internationally.

Eligible agricultural categories include livestock, livestock products, food and feed crops, fish and shellfish, horticulture, viticulture, apiary, and forest products and processed or manufactured products derived from such commodities. Reflecting the growing diversity of U.S. agriculture, in recent years, FSMIP has funded projects dealing with nutraceuticals, bioenergy, compost, and products made from agricultural residues.

Proposals may deal with barriers, challenges, or opportunities manifesting at any stage of the marketing chain including direct, wholesale, and retail. Proposals may involve small, medium, or large scale agricultural entities but should potentially benefit multiple producers or agribusinesses. Proprietary proposals that benefit one business or individual will not be considered.

Proposals that address issues of importance at the State, regional or national level are appropriate for FSMIP. FSMIP also seeks unique proposals on a smaller scale that may serve as pilot projects or case studies useful as a model for others. Of particular interest are proposals that reflect a collaborative approach among the States, academia, the farm sector and other appropriate entities and stakeholders.

FSMIP's enabling legislation authorizes projects to:

—Determine the best methods for processing, preparing for market, packing, handling, transporting, storing, distributing, and marketing agricultural products.
—Determine the costs of marketing agricultural products in their various forms and through various channels.
—Assist in the development of more efficient marketing methods, practices, and facilities to bring about more efficient and orderly marketing, and reduce the price spread between the producer and the consumer.
—Develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.
—Eliminate artificial barriers to the free movement of agricultural products in commercial channels.
—Foster new/expanded domestic/foreign markets and new/expanded uses of agricultural products.
—Collect and disseminate marketing information to anticipate and meet consumer requirements, maintain farm income, and balance production and utilization.

Applicants have the option of submitting FSMIP applications electronically through the central Federal grants web site, *http://www.grants.gov* instead of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants web site well before the application deadline and to begin the application process before the deadline. Additional details about the FSMIP application process for all applicants are available at the FSMIP Web site: *http://www.ams.usda.gov/tmd/fsmip.htm.*

FSMIP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: November 28, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E5–6787 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. CN–06–002]

Recommendations of Advisory Committee on Universal Cotton Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) held a meeting of the Universal Cotton Standards Advisory Committee in Memphis, Tennessee on June 9 and 10, 2005. This notice announces the Advisory Committee's recommendation to expand the Universal Cotton Standards Agreement to include Universal HVI Cotton Color Standards and to recognize the color tolerance for Rd and +b as defined by USDA Guidelines for HVI Testing. These guidelines can be obtained on the Internet from the USDA, AMS, Cotton Program's Web site at *http://www.ams.usda.gov/cotton/cnpubs.htm.*

DATES: Comments must be received on or before January 31, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning the Advisory Committee's recommendation to Darryl W. Earnest, Deputy Administrator, Cotton Program, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., STOP 0224, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov* or *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at: www.ams.usda.gov/cotton/rulemaking.htm.

FOR FURTHER INFORMATION CONTACT: Darryl W. Earnest, Deputy Administrator, Cotton Program, AMS, USDA, 1400 Independence Ave., SW., STOP 0224, Washington, DC 20250–0224, telephone 202–720–3193, facsimile 202–690–1718, or e-mail at *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION: The Universal Cotton Standards Advisory Committee meets triennially to consider any necessary changes to the Universal Cotton Standards and to review freshly prepared sets of Universal Cotton Standards for conformity with the existing standards.

At its June 9–10, 2005, meeting the committee recommended to expand the Universal Cotton Standards Agreement to include Universal HVI Cotton Color Standards and to recognize the color tolerance for RD and +b as defined by USDA Guidelines for HVI Testing. These guidelines can be obtained on the Internet at *http://www.ams.usda.gov/cotton/cnpubs.htm.*

High Volume Instrument (HVI) Classing of cotton has been available on an optional basis since 1980. Since 1991, HVI classification has been provided on all cotton classed by USDA along with the classer color grade and

leaf grade, which conform to the Universal Grade Standards. HVI systems provide the most scientific and reliable sources of cotton quality information available. The advisory committee includes representatives of all segments of the U.S. cotton industry and the 23 overseas cotton associations that are signatories to the Universal Cotton Standards Agreement. Adoption of this recommendation will continue to facilitate establishing a universal language for the marketing of U.S. cotton under the HVI classification system.

Authority: 7 U.S.C. 51–65.

Dated: November 28, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E5–6781 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers; Correction

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service (FAS) published a document in the **Federal Register** of November 8, 2005, concerning the termination of petitions for trade adjustment assistance (TAA) that were filed by shrimp producers in Alabama, Arizona, Georgia, North Carolina, South Carolina, and Texas. The document did not contain information regarding all the states that were also terminated.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, 202–720–2916.

Correction

In the **Federal Register** issue of November 8, 2005, in FR Doc. 05–22228, on page 67658, in the first column, correct the notice to read:

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of petitions for trade adjustment assistance (TAA) that was filed by shrimp producers in Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. Shrimp producers in these states are no longer eligible for TAA benefits in fiscal year 2006.

Dated: November 21, 2005.

W. Kirk Miller,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. E5–6747 Filed 12–1–05; 8:45 am]

BILLING CODE 3410–10–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: January 1, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Paper or Stationer's Shears (GSA Global Supply Only).
NSN: 5110–00–161–6912—9″ Shears have 4⅝″ length of cut.
Straight Trimmer's Shears (GSA Global Supply Only).
NSN: 5110–00–293–9199—7″ Shears have 3″ length of cut.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contracting Activity: GSA, Hardware & Appliance Center, Kansas City, Missouri.

Services

Service Type/Location: Custodial Services, Cliffside Gas Field Facility, 15 Miles NW. of Amarillo, Amarillo, Texas.
NPA: World Technical Services, Inc., San Antonio, Texas.
Contracting Activity: Bureau of Land Management, Albuquerque, New Mexico.
Service Type/Location: Grounds Maintenance, USDA, Agriculture Research Service, Weslaco Center, 2413 E. Highway 83, Weslaco, Texas.
NPA: World Technical Services, Inc., San Antonio, Texas.
Contracting Activity: USDA, Agriculture Research Service, College Station, Texas.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Gloves, Patient Examining.
NSN: 6515–01–411–4796—Gloves, Patient Examining.
NSN: 6515–01–441–6103—Gloves, Patient Examining.
NSN: 6515–01–373–8306—Gloves, Patient Examining.
NPA: Bosma Industries for the Blind, Inc., Indianapolis, Indiana.
Contracting Activity: Department of Veterans Affairs, Washington, DC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–6754 Filed 12–1–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: January 1, 2006.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On September 30, 2005, the Committee for Purchase From People Who are Blind or Severely Disabled published notice (70 FR 57253) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the government.

2. The action will result in authorizing small entities to furnish the product and service to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and service are added to the Procurement List:

Product

Mat, Floor Rubber.
NSN: 2540–01–298–8449—61″ x 36″ fabricated mat, reinforced with steel wire.
NPA: Hope Haven, Inc., Rock Valley, Iowa.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.

Service

Service Type/Location: Appliance Cleaning Service, Department of Homeland Security, National Records Center, 150 Space Center Loop, Lee's Summit, Missouri.
NPA: Independence and Blue Springs Industries, Inc., Independence, Missouri.
Contracting Activity: DHS—Burlington Contracting Office, South Burlington, Vermont.

Deletions

On October 7, 2005, the Committee for Purchase From People Who are Blind or Severely Disabled published notice (70 FR 58670) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Scourer, Copper.
NSN: M.R. 505—Scourer, Copper.
NPA: Lighthouse for the Blind of the Palm Beaches, Inc., West Palm Beach, Florida.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Scrubber, Pot & Dish and Refill.
NSN: M.R. 582—Scrubber, Pot & Dish and Refill.
NPA: Lighthouse International, New York, New York.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Services

Service Type/Location: Administrative Services, Defense Logistics Agency, DCASR Building B–95, 805 Walker Street, Marietta, Georgia.
NPA: Nobis Enterprises, Inc., Marietta, Georgia.
Contracting Activity: Department of Defense.
Service Type/Location: Furniture Rehabilitation Metal, Naval Ordnance Station, Louisville, Kentucky.
NPA: New Vision Enterprises, Inc., Louisville, Kentucky.
Contracting Activity: Department of the Navy.
Service Type/Location: Janitorial/Custodial, Defense Contracting Management, District South, 805 Walker Street, Marietta, Georgia.
NPA: Nobis Enterprises, Inc., Marietta, Georgia.
Contracting Activity: Department of the Army.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–6755 Filed 12–1–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: 2007 Economic Census, Precanvass for the Commodity Flow Survey.

Form Number(s): CFS–0001, CFS–0002.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,933 hours.

Number of Respondents: 85,000.

Avg. Hours Per Response: CFS–0001—5 min.; CFS–0002—2 min.

Needs and Uses: The U.S. Census Bureau plans to conduct the 2007 Commodity Flow Survey (CFS) as a part of the quinquennial Economic Census. In advance of the 2007 CFS we will conduct a Precanvass. That Precanvass is the subject of this request.

The information collected in the 2007 CFS Precanvass will be used to:

a. Improve the frame and sampling efficiency of the 2007 CFS, and

b. Provide contact information for the largest establishments, reducing the cost and improving the timeliness of data collection.

The 2007 CFS Precanvass will be mailed to auxiliary establishments, and establishments expected to be selected with certainty in the 2007 CFS.

The Commodity Flow Survey, a component of the Economic Census, is the only comprehensive source of multi-modal, system-wide data on the volume and pattern of goods movement in the United States. The CFS is conducted in partnership with the Bureau of Transportation Statistics (BTS), U.S. Department of Transportation. The 2007 CFS will be the subject of a separate submission in 2006.

Affected Public: Business or other for-profit.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 131, 193, and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202) 395–7245 or e-mail *(susan_schechter@omb.eop.gov)*.

Dated: November 28, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–6743 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Questionnaire for Building Permit Official

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 31, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5161 (or via the Internet at *Erica.mary.filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request an extension of the current Office of Management and Budget (OMB) clearance of the Questionnaire for Building Permit Official (SOC–QBPO). The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaire SOC–QBPO to collect information from state and local building permit officials, such as (1) the types of permits they issue, (2) the length of time a permit is valid, (3) how they store permits, and (4) the geographic coverage of the permit system. We need this information to carry out the sampling for the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Housing Sales.

We plan no changes to the SOC–QBPO, the information collection methodology, or the sample size.

II. Method of Collection

The Census Bureau uses its field representatives to obtain information on the operating procedures of a permit office. The field representative visits the permit office, conducts the interview, and completes the electronic form.

III. Data

OMB Number: 0607–0125.

Form Number: SOC–QBPO.

Type of Review: Regular Review.

Affected Public: State and local governments.

Estimated Number of Respondents: 900.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 225 hours.

Estimated Total Annual Cost: The cost to the respondents is estimated to be $4,502 based on an average hourly salary of $20.01 for state and local government employees.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 28, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–6744 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS) Fertility Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 31, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, U.S. Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau is requesting clearance for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June 2006 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 2004, and have been asked periodically since 1971.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

II. Method of Collection

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0610.

Form Number: There are no forms. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Response: 1 minute.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.

Respondents' Obligation: Voluntary.

Legal Authority: Title 13, U.S.C. 182; and Title 29, U.S.C., 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: November 28, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–6745 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1420]

Grant of Authority for Subzone Status, IKEA Wholesale Inc. (Home Furnishings and Accessories), Lebec, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board of Harbor Commissioners of the City of Los Angeles (California), grantee of Foreign-Trade Zone 202, has made application to the Board for authority to establish special-purpose subzone status at the warehousing and distribution facility (home furnishings and accessories) of IKEA Wholesale Inc., located in Lebec, California (FTZ Docket 6–2005, filed 1/21/2005);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 5605–5606, 2/3/2005); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for distribution activity involving home furnishings and accessories at the warehousing/distribution facility of IKEA Wholesale Inc., located in Lebec,

California (Subzone 202D), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 17th day of November, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–6782 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1418]

Grant of Authority for Subzone Status, Arctic Cat, Inc. (All-Terrain Vehicle Engines and Snowmobiles), Thief River Falls, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Koochiching Economic Development Authority, grantee of Foreign-Trade Zone 259 (International Falls, Minnesota), has made application for authority to establish special-purpose subzone status at the all-terrain vehicle engine and snowmobile manufacturing facilities of Arctic Cat, Inc., located in Thief River Falls, Minnesota (Docket 56–2004, filed 12–3–2004);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 71779, 12–10–2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to all-terrain vehicle engine and snowmobile manufacturing at the facilities of Arctic Cat, Inc., located in Thief River Falls, Minnesota (Subzone 259A), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 17th day of November, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–6783 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–2005]

Foreign-Trade Zone 77—Memphis, TN; Expansion of Manufacturing Authority—Subzone 77B; Brother Industries (U.S.A.) Inc. (Manufacture/ Refurbish Toner Cartridges)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis and Shelby County (Tennessee), Division of Planning and Economic Development, grantee of FTZ 77, to expand the scope of manufacturing authority for Brother Industries (U.S.A.) Inc. (Brother) under zone procedures within Subzone 77B, at the Brother plant located in Bartlett, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 17, 2005.

Subzone 77B was approved by the Board in 1995 and is currently comprised of two sites in Bartlett, Tennessee. Authority was initially granted for the manufacture of typewriters and word processors (Board Order 774, 60 FR 48100–48101, 9/18/1995). Brother's manufacturing authority was later expanded to include postage franking machines/electronic business equipment (Board Order 1109, 65 FR 41625–41626, 7/6/2000).

Brother is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 77B to include manufacturing/refurbishing toner cartridges. The finished toner cartridges fall into categories which enter the United States duty free. Brother's application indicates that foreign-sourced materials under the proposed expanded scope (toner; toner caps; collars, guards, and covers; seals; labels; developer rollers; bearings; springs; gears; retaining rings; washers; lower film; foil bags; and instruction sheets) have duty rates ranging from duty-free to 6.5% *ad valorem.*

Expanded subzone manufacturing authority would enable Brother to choose the lower duty rate that applies to the new finished products for foreign components, when applicable, on shipments to the U.S. market. Brother indicates that it will also realize logistical/procedural and other benefits related to the proposed expanded scope of manufacturing. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is January 31, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 15, 2006.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Memphis U.S. Export Assistance Center, c/o Memphis Regional Chamber of Commerce, 22 North Front Street, Suite 200 Memphis, TN 38103.

Dated: November 17, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–6784 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1421]

Grant of Authority for Subzone Status; Samsung Austin Semiconductor, LLC (Semiconductor Memory Devices); Austin, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Foreign-Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, has made application to the Board for authority to establish special-purpose subzone status with export-only manufacturing authority (semiconductor memory devices) for the facilities of Samsung Austin Semiconductor, LLC, located in Austin, Texas (FTZ Docket 18–2005, filed 4/28/2005);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 23843–23844, 5/5/2005); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status with export-only manufacturing authority for activity related to semiconductor memory device manufacturing at the facilities of Samsung Austin Semiconductor, LLC, located in Austin, Texas, (Subzone 183B), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 17th day of November, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E5–6785 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–080

Carbon Steel Plate from Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Nucor Corporation, a U.S. domestic producer of carbon steel plate, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on carbon steel plate from Taiwan. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 42028 (July 21, 2005) (*Initiation Notice*). The period of review (POR) covered June 1, 2004 through May 31, 2005. We are now rescinding this review because there is no evidence the respondent had any reviewable U.S. transactions during the POR.

EFFECTIVE DATE: December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7868, Washington, DC 20230; telephone (202) 482–5604 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping finding on carbon steel plate from Taiwan on June 13, 1979. *See Antidumping; Certain Carbon Steel Plate from Taiwan*, 44 FR 33877 (June 13, 1979). On June 1, 2005 the Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order for the period of June 1, 2004 through May 31, 2005. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation*, 70 FR 31422 (June 1, 2005). In accordance with 19 CFR 351.213(b)(1), on June 30, 2005 petitioner Nucor Corporation requested a review of this finding with respect to the manufacturer and/or exporter China Steel Corporation (China Steel). In response to this request, the Department published the initiation of the antidumping duty administrative review on carbon steel plate from Taiwan on July 21, 2005. *See Initiation Notice*.

On August 10, 2005, the Department issued an antidumping questionnaire to China Steel to which we did not receive a response. We subsequently issued a supplemental questionnaire on September 2, 2005 and China Steel submitted a brief response on September 16, 2005. On October 18, 2005 the Department requested further clarification and issued a second supplemental questionnaire and China Steel filed its response on October 28, 2005.

China Steel notified the Department that neither it nor any of its affiliates had any reviewable U.S. transactions during the POR. The Department obtained documentation from U.S. Customs and Border Protection (CBP) for specific entries to the United States of merchandise subject to this order. *See* November 1, 2005 memorandum from Maryanne Burke to the file entitled, ''2004/2005 Administrative Review of Carbon Steel Plate from Taiwan: Release of Customs Documentation.'' Also, CBP Headquarters issued a no shipments inquiry for carbon steel plate from Taiwan from China Steel. *See* CBP message no. 5258209 dated September 15, 2005 available at *http://addcvd.cbp.gov/*. No information from these inquiries indicated that China Steel had reviewable U.S. transactions during the POR. Accordingly, we notified the petitioners that we intended to rescind this administrative review with respect to the respondent and they did not object.

Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we are rescinding this review of the antidumping finding on carbon steel plate from Taiwan for the period June 1, 2004 through May 31, 2005. The Department will issue appropriate assessment instructions to CBP within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 28, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–23563 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–6905 and (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2005, the Department of Commerce (''the Department'') published its notice of preliminary results for certain frozen fish fillets from the Socialist Republic of Vietnam. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007 (September 13, 2005). From October 10, 2005, through October 14, 2005, the Department conducted a verification of questionnaire responses, sales, and cost data of Vinh Hoan Co., Ltd. (''Vinh Hoan'') and Can Tho Agricultural and Animal Products Import Export Company (''CATACO''). The verification report for CATACO was issued on November 1, 2005. The verification report for Vinh Hoan was issued on November 14, 2005. The final results are currently due on January 11, 2006.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue final results in an administrative review of an antidumping duty order 120 days after the date on which the preliminary results are published. The Act further provides, however, that the Department may extend that 120-day period to 180 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the final results in the administrative review of certain frozen fish fillets from Vietnam within this time limit. Specifically, the Department needs additional time to consider the verification results and the resulting changes to the margin calculations. Additionally, the Department is extending the deadline for the final results to accommodate parties' public hearing request so parties may address all issues. Accordingly, the Department finds that additional time is required to complete these final results.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the final results to a maximum of 180 days from the publication date of the preliminary results. For the reasons noted above, we are extending the time for the completion of the final results of this review by 60 days, until no later than March 13, 2006. This notice is published in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: November 29, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–23564 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–357–812)

Honey from Argentina: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 4, 2005, the Department of Commerce (the Department) published the initiation of a new shipper review of the antidumping duty order on honey from Argentina covering the period December 1, 2003, to December 31, 2004. *See Honey From Argentina: Initiation of New Shipper Antidumping Duty Administrative Review*, (*New Shipper Initiation*), 70 FR 5965 (February 4, 2005). This review covers one exporter, El Mana S.A. (El Mana) of Argentina. For the reasons discussed below and in an our accompanying Rescission Memorandum, we are rescinding this new shipper review in its entirety.

EFFECTIVE DATE: December 2, 2005.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482- 0408 and (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Background

On December 30, 2004, the Department received a letter from El Mana, an exporter, requesting that the Department conduct a new shipper review of the antidumping duty order on honey from Argentina. On January 31, 2005, the Department initiated this antidumping new shipper review covering the period December 1, 2003, to December 31, 2004. *See Honey From Argentina: Initiation of New Shipper Antidumping Duty Administrative Review*, 70 FR 5965 (February 4, 2005). On February 8, 2005, the Department issued sections A–C of the Department's antidumping questionnaire to El Mana.

El Mana responded to the Department's questionnaires on March 3 and March 4, 2005 (section A), and March 21, 2005 (sections B and C) (QR). On February 8, 2005, the Department issued a questionnaire to the importer of record for the U.S. sale at issue. The importer responded on March 21, 2005.

On April 26, 2005, the Department issued its first supplemental questionnaire to El Mana. El Mana responded on May 19, 2005. The Department issued a second supplemental questionnaire to El Mana on May 24, 2005, to which El Mana responded on May 31, 2005. The Department then requested additional information on June 20, 2005, to which El Mana filed its response on July 5, 2005. Petitioners submitted comments to the supplemental questionnaire responses (SQR) on July 8, 2005. On July 25, 2005, the Department issued a final supplemental questionnaire, to which El Mana responded on August 12, 2005.

On June 23, 2005, the Department published a notice of extension of the time limit for the completion of the preliminary results until November 28, 2005. *See* 70 FR 36374.

On September 26, the Department issued a memorandum ''New Shipper Review of the Antidumping Duty Order on Honey from Argentina: Intent to Rescind the Review with Respect to El Mana. '' On October 6, 2005, both petitioners (the American Honey Producers Association and the Sioux Honey Association) and the respondent El Mana provided comments to our stated intent to rescind. On October 11, 2005, both petitioners and respondent issued rebuttal comments. On October 14, 2005, petitioners provided additional comments concerning new information in respondent's rebuttal comments. On November 10, 2005, the Department rejected El Mana's rebuttal comments dated October 11, 2005, and asked El Mana to resubmit the rebuttal comments without reference to the new information included in the October 11, 2005, submission. At the same time, the Department rejected petitioners additional comments, dated October 14, 2005, as they included references to the new information referenced by El Mana in its October 11, 2005, submission. El Mana refiled its rebuttal comments on November 15, 2005, and these were also rejected for the same reasons. Subsequently, El Mana refiled the comments on November 16, 2005.

Analysis of New Shipper Review

On September 26, 2005, the Department issued a memorandum detailing our intent to rescind this review because we preliminarily determined the cooperative that supplied El Mana with the subject merchandise knew, or should have known, that the final destination of the subject merchandise was the United States. See Memorandum to Barbara E. Tillman, entitled ''New Shipper Review of the Antidumping Duty Order on Honey from Argentina: Intent to Rescind the Review with Respect to El Mana,'' dated August September 26, 2005 (Intent to Rescind Memorandum).

The Department preliminarily determined the cooperative had in its possession at the time of sale of the subject merchandise to El Mana, labels indicating the final destination of the subject merchandise as the United States. The totality of the facts on the record led the Department to conclude that the cooperative had or should have had knowledge that the merchandise was destined for the United States. The Department stated that because there was no request for a review of the cooperative's sale to El Mana and because El Mana made no other sales during the POR, the Department intended to rescind the current new shipper review of El Mana.

Rescission of New Shipper Review

For the reasons stated in the accompanying Rescission Memorandum and as outlined above, and pursuant to section 751(a)(2)(B) and 19 CFR 351.214(f), we are rescinding this new shipper review. Parties can find a complete discussion of the issues raised in this new shipper review and the corresponding recommendations in this memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. Since the Department is rescinding the new shipper review, we are not calculating a company–specific rate for El Mana.

Notification

The Department will notify U.S. Customs and Border Protection (CBP) that bonding is no longer permitted to fulfill security requirements for shipments of Argentine honey by El Mana entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 30.24 percent *ad valorem* should be collected for any entries exported by El Mana.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: November 28, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix – Rescission Memorandum

1. Cooperative's knowledge of the destination of the merchandise at the time of sale.
2. Date of sale of subject merchandise by El Mana to the U.S. customer.
3. El Mana as a trading company or reseller

4. Other Issues raised by petitioner

[FR Doc. 05–23561 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–875

Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Holton or Will Dickerson, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1324, or 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2005, the Department published in the **Federal Register** a notice for an opportunity to request an administrative review of non–malleable cast iron pipe fittings from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 16799 (April 1, 2005). As a result of a request for a review filed by Myland Industrial Co., Ltd. and Buxin Myland (Foundry) Ltd. (collectively ''Myland'') on April 25, 2005, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of non–malleable cast iron pipe fittings from the PRC for the period April 1, 2004, through March 31, 2005. *See Initiation of Antidumping*

and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 30694 (May 27, 2005). The preliminary results of review are currently due no later than December 31, 2005.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 365 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the Department needs additional time to analyze information pertaining to the respondent's sales practices, factors of production, and corporate relationships, to evaluate certain issues raised by the petitioners, and to issue and review responses to supplemental questionnaires.

Because it is not practicable to complete this review within the time specified under the Act, we are fully extending the time period for issuing the preliminary results of review by 120 days until April 30, 2006, in accordance with section 751(a)(3)(A) of the Act. Further, because April 30, 2006, falls on a Sunday, the preliminary results will be due on May 1, 2006, the next business day. The final results continue to be due 120 days after the publication of the preliminary results. This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: November 28, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–23562 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112905A]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in December, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, December 15, 2005, at 9:30 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Courtyard by Marriott, 240 Mishawum Road, Woburn, MA 01801; telephone: (781) 932–3200; fax: (781) 935–6163.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will meet to review final reports of cooperative research projects and discuss 2006 activities as well as long range planning.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Dated: November 29, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–6756 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Oceanic and Atmospheric Administration (NOAA) Cooperative Institute (CI) Interim Handbook, Version 1.0, December 2005

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for public comments.

SUMMARY: NOAA publishes this notice to announce the implementation of the new NOAA Policy on Cooperative Institutes (NOAA Administrative Order Series, NAO 216–107, effective date September 2, 2005); and the availability of the NOAA CI Interim Handbook, Version 1.0, December 2005, for public comment.

DATES: Comments on this draft document must be submitted by January 18, 2006.

ADDRESSES: The NOAA CI Interim Handbook is available at *http://www.nrc.noaa.gov/ci/docs/fedreg/ci-handbook120505.pdf.*

The public is encouraged to submit comments on the NOAA CI Interim Handbook (CI Handbook) electronically to *coop.inst@noaa.gov.* For commenters who do not have access to a computer, comments on the CI Handbook may be submitted in writing to Dr. John Cortinas, Office of Oceanic and Atmospheric Research, Laboratories and Cooperative Institutes Office, 1315 East West Highway, R/LCx2, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. John Cortinas, Office of Oceanic and Atmospheric Research, Laboratories and Cooperative Institutes Office, 1315 East West Highway, R/LCx2, Silver Spring, Maryland 20910, Phone (301) 713–9121 ext. 206.

SUPPLEMENTARY INFORMATION: The CI Handbook is being issued pursuant to the authority of NAO 216–107, NOAA Policy on Cooperative Institutes (*http://www.corporateservices.noaa.gov/~ames/NAOs/Chap_216/naos_216_107.html*; hereafter, referred to as the NOAA CI Policy), Section 1.03 (2005), and applies to all NOAA Line Offices. The NOAA CI Policy originated from the January 2004 NOAA Science Advisory Board (SAB) recommendation to develop a NOAA-wide process by which CIs are established and maintained. A copy of the SAB report is available at *http://www.sab.noaa.gov/*

Reports/RRT_Report-080604.pdf. The final NOAA CI Policy and the CI Handbook were developed after soliciting public comments on the document entitled, ''Proposed NOAA Policy and Process for Creating and Managing Cooperative Institutes'', (70 FR 11195, March 8, 2005). All comments received by NOAA during that period were considered when writing the NOAA CI Policy and the CI Handbook.

The CI Handbook outlines procedures for establishing, soliciting, awarding, maintaining, reviewing, renewing, and closing NOAA CIs. The CI Handbook references policies and procedures for use by NOAA Line Offices (LOs) for ensuring the consistent implementation of legislation, regulations, Office of Management and Budget (OMB) circulars, executive orders (EOs) and the Department of Commerce (DOC) Grants and Cooperative Agreements Interim Manual (*http://oam.ocs.doc.gov/GMD_interimManual.html;* hereafter referred to as the DOC Manual). The CI Handbook is being issued as supplemental operating unit-specific policies and procedures to cover items not covered by the DOC Manual to address programmatic requirements for the NOAA CIs, and does not conflict with the provisions of the DOC Manual.

The CI Handbook applies to all NOAA CIs established after the effective date of NAO 216–107 and to all competitive NOAA CIs established under the DOC Manual from February, 2002 through September 2, 2005. All other CIs established prior to the effective date of the NAO will continue to be maintained by the responsible NOAA LO under the terms of their existing agreement and extension, but will be subject to the guidelines of the CI Handbook to the maximum extent possible.

NOAA has elected to issue an interim Handbook and to make it immediately effective, to the extent practicable, since it is extremely important to provide NOAA LOs with interim direction to ensure consistent interpretation and implementation of the NAO. NOAA is also committed to provide adequate opportunities for the public to comment on the administrative policies of the NOAA CIs and is now requesting public comment on the CI Handbook. All comments will be considered in the development of the final version of the CI Handbook.

NOAA welcomes all comments on the content of the CI Handbook, particularly those on any inconsistencies perceived within the CI Handbook and possible omissions of important topics or issues. For any shortcoming noted within the CI Handbook, please propose specific remedies.

Please submit comments according to the instructions detailed herein for preparing and submitting your comments. Using the format guidance described below will facilitate the consideration of all reviewer comments and ensure proper receipt. Please provide background information about yourself on the first page of your comments: Your name(s), organization(s), and area(s) of expertise, mailing address(es), and telephone and fax number, e-mail address(es). Overview comments should follow your background information and should be numbered. Comments that are specific to particular pages and paragraphs should follow any overview comments and should identify the page and paragraph numbers to which they apply. Please number and print identifying information at the top of all pages.

The full text of the CI Interim Handbook is available on the World Wide Web at *http://www.nrc.noaa.gov/ci/docs/fedreg/ci-handbook120505.pdf.* Paper copies are available upon request from the address and phone numbers listed earlier in this notice. All public comments will be accessible on *http://www.nrc.noaa.gov/ci.*

Dated: November 29, 2005.

John L. Hayes,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E5–6765 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Distribution of NOAA Digital Navigation and Associated Data

AGENCY: Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: NOAA's National Ocean Service (NOS) is announcing the distribution of Raster Navigational Charts (RNCs) to the public via the Internet. These RNCs have primary application in navigation and geographic information systems. Providing mariners with more timely and accurate information via the Internet is expected to improve their decision-making capability in an often rapidly changing marine environment, thus improving marine safety and reducing the risk of accidents, including injury to people, property, the environment, and local economies. Paper versions of the nautical charts will continue to be available from existing sources.

In addition, NOS is announcing the availability of a public service by which fully updated versions of NOAA nautical charts are posted on the Internet in a manner that they may be readily examined on-line. The intent of this service is to make the updated charts easily accessible anywhere for use as a planning and reference tool. Access to the on-line, nautical chart viewer can be had from *http://www.NauticalCharts.gov/viewer.*

DATES: Comments on this action should be submitted on or before 5 p.m., EST, January 3, 2006.

ADDRESSES: Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD, 20910. Written comments may be faxed to (301) 713–4019. Comments by e-mail should be submitted to *Jim.Gardner@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Captain James Gardner, Chief, Marine Chart Division, Office of Coast Survey, NOS/NOAA, 301–713–2724 x101, fax 301–713–4516, *Jim.Gardner@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOS is responsible for providing nautical charts and related information for safe navigation and other purposes under 33 U.S.C. 883a *et seq.* NOS developed Raster Navigational Charts under a cooperative research and development agreement (CRADA) with Maptech, Inc. as one means of fulfilling this responsibility. During the period the CRADA was in effect, the resulting RNCs were produced by Maptech, and were sold through commercial channels. At the conclusion of the CRADA, NOS determined that RNCs had proven to be a beneficial product that contributed to the safety of navigation, and were desired by the public. NOS therefore decided to continue the production of RNCs and to distribute them via the Internet.

NOS had previously announced its intention to begin using the Internet to distribute more of NOS' products when it was reasonable and feasible (see **Federal Register**, May 21, 2003, Volume 68, Number 98, page 27784–27785). NOAA consulted with the U.S. Coast Guard about this proposal. The Coast Guard concurred that such action would promote marine safety. The action is also designed to be consistent with

section 2 of the Paperwork Reduction Act, 44 U.S.C. 3506(d) and Office of Management and Budget Circular A–130 regarding information management and dissemination, and is expected to maximize the usefulness of government data.

One of the primary reasons for making digital navigational and related data available to the public on the Internet is to promote safe navigation. Today's digital technologies and widespread access to the Internet provide the means to make this information available to the mariner much sooner, sometimes in near real-time. In addition, more accurate or complete information can be distributed in digital format than could be provided in a printed document. Releasing NOS digital navigation data and information via the Internet is expected to encourage commercial mariners, recreational boaters, and others to use the most accurate and complete digital information available.

A secondary benefit of releasing these data on the Internet is to promote the open and efficient exchange of public, scientific, and technical information. The public generally, not just mariners, have an interest in these data. Internet access to NOS navigation and other data should improve its dissemination to ocean engineers, marine scientists, emergency response personnel, managers and policy makers (including those in State and local governments), academia and other institutions, as well as the private sector. Such action may promote scientific advances, sound marine and coastal management, and the commercial development of new and better navigational or other products.

NOS is concerned about the use of these data in situations that may compromise marine safety. Consequently, NOS plans to work with mariners, product developers, and others to establish standards for those who wish to incorporate RNCs into navigation products, and to certify compliance with those standards for makers of derived navigational products.

NOS is publishing this notice to comply with section 8a(6)(j) of the Office of Management and Budget Circular A–130 which directs agencies to provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products.

Dated: November 22, 2005.

Captain Roger L. Parsons,

NOAA, Director, Office of Coast Survey, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. E5–6764 Filed 12–1–05; 8:45 am]

BILLING CODE 3510–JE–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission (''Commission'') will hold a public roundtable meeting at which invited participants will discuss global markets-related issues in the financial services and commodity markets. Participants will be announced at a later date.

DATES: Tuesday, December 13, 2005, from 1 to 4 p.m.

ADDRESSES: 1155 21st Street, NW., Washington, DC, Lobby Level Hearing Room located at Room 1000.

STATUS: Open.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Issued by the Commission in Washington, DC on November 30, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–23623 Filed 11–30–05; 12:41 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 19, 2006, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6 p.m. Call to Order
Introductions
Review of Agenda
Approval of November Minutes
6:15 p.m. Deputy Designated Federal Officer's Comments
6:35 p.m. Federal Coordinator's Comments
6:40 p.m. Ex-officios' Comments
6:50 p.m. Public Comments and Questions
7 p.m. Task Forces/Presentations
- End State Vision
- Water Disposition/Water Quality Task Force
- Long Range Strategy/Stewardship Task Force
- Community Outreach Task Force

8 p.m. Public Comments and Questions
8:10 p.m. Break
8:20 p.m. Administrative Issues
- Revisions to Bylaws and Operating Procedures
- Budget Review
- Review of Workplan
- Review Next Agenda

8:30 p.m. Review of Action Items
8:35 p.m. Subcommittee Reports
- Executive Committee

8:50 p.m. Final Comments
9 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public

Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m., on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on November 23, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E5–6763 Filed 12–1–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6669–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050325, ERP No. D–AFS–D65032–WV, Programmatic—Monongahela National Forest Plan Revision, Proposes to Revise Land and Resource Management Plan, Barbour, Grant, Greenbrier, Nicholas, Pendleton, Pocahontab, Preston, Randolph, Tucker, Webster Counties, WV.

Summary: EPA expressed environmental concerns about the potential for impacts to air and water quality, and habitat.

Rating EC1.

EIS No. 20050378, ERP No. D–COE–C39018–NJ, Liberty State Park Ecosystem Restoration Project, Hudson Raritan Estuary Study, To Address the Adverse Impacts Associated with Past Filling Activities, Port Authority of New York and New Jersey, Jersey City, Hudson County, NJ.

Summary: EPA does not object to the implementation of the preferred alternative.

Rating LO.

EIS No. 20050386, ERP No. D–NOA–L39063–AK, Office of Ocean and Coastal Resource Management Approval of Amendments to the State of Alaska's Coastal Management Program, Implementation, Funding, AK.

Summary: EPA is concerned about the potential negative impacts to biological, cultural and subsistence resources, and subsistence users in coastal Alaska communities due to the limited range of alternatives analyzed, lack of cumulative effects analysis, environmental justice concerns and lack of documentation of effective government to government consultation with affected Alaska Native tribes.

Rating EC2.

EIS No. 20050397, ERP No. D–BIA–L65495–ID, PROGRAMMATIC—Coeur d' Alene Tribe Integrated Resource Management Plan, Implementation, Coeur d' Alene Reservation and Aboriginal Territory , ID.

Summary: While EPA has no objection to the proposed action, we did request clarification on how predicted harvest levels/habitat acreage compared to historic ranges/sizes and on non-native species.

Rating LO.

EIS No. 20050404, ERP No. D–NPS–F65076–OH, First Ladies National Historic Site General Management Plan, Implementation, Canton, OH.

Summary: EPA has no objections to the preferred alternative.

Rating LO.

EIS No. 20050416, ERP No. D–NOA–G90016–TX, Programmatic—Texas National Estuarine Research Reserve and Management Plan, Mission-Aransas Estuary, Site Designation, Federal Approval, TX.

Summary: EPA had no objections to the preferred alternative.

Rating LO.

EIS No. 20050395, ERP No. DS–HUD–K80045–CA, Stillwater Business Park, New and Revised Information, Development of Business Park, Annexation AN1–01, Shastec Redevelopment Project Area, Airport Land Use Plan Amendment , Pre-Zone, General Plan Amendment GPA–2–01, Rezone RZ–1–01, Funding and U.S. Army COE 404 Permit, City of Redding, Shasta County, CA.

Summary: EPA has environmental concerns about alternatives, off-site mitigation, cumulative impacts to habitat/hydrology, and induced growth impacts.

Rating EC2.

EIS No. 20050422, ERP No. DS–COE––G36072–AR, Fourche Bayou Basin Project, 1,750 Acre Bottomland Acquisition with Nature Appreciation Facilities, Development, Funding, City of Little Rock, Pulaski County, AR.

Summary: EPA strongly supports the U.S. Army Corps of Engineers plans to proceed with purchase of the 1,750 acres of bottomland hardwoods and has no objections to the preferred alternative.

Rating LO.

Final EISs

EIS No. 20050336, ERP No. F–FAA–D40328–VA, Washington Dulles International Airport Project, Acquisition of Land, Construction and Operation, IAD 2004 Airport Layout Plan (ALP), Dulles, VA.

Summary: EPA continues to be concerned about mitigation proposed for wetland and stream impacts. In addition, EPA expressed concern about air toxic modeling.

EIS No. 20050384, ERP No. F–COE–D39029–DC, Washington Aqueduct's Project, Proposed Water Treatment Residuals Management Process, NPDES Permit, Dalecarlia and McMillan Water Treatment Plants, Potomac River, Washington, DC.

Summary: EPA believes that the Final EIS adequately considers the potential impacts of the preferred and other alternatives and has no objections to its implementation.

EIS No. 20050430, ERP No. F–COE–D36075–PA, The Town of Bloomsburg, Columbia County, Pennsylvania Flood Damage Reduction Project, Implementation, Integrated Feasibility Report, Susquehanna River and Fishing Creek, Town of Bloomsburg, Columbia County, PA.

Summary: EPA has no objection to the proposed action.

Dated: November 29, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E5–6761 Filed 12–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6669–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 11/21/2005 through 11/25/2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050497, Third Final EIS (Tiering), FHW, MO, Interstate 70 Corridor Improvements, Section of Independent Utility #7, a 40-Mile Portion of the I–70 Corridor from just West of Route 19 (milepost 174) to Lake St. Louis Boulevard (milepost 214) Montgomery, Warren, St. Charles Counties, MO. Wait Period Ends: 01/03/2006. Contact: Peggy Casey 573–636–7104.

EIS No. 20050498, Draft EIS, BLM, WY, Seminoe Road Natural Gas Development Project, Proposed Coalbed Natural Gas Development and Operation, Carbon County, WY. Comment Period Ends: 01/31/2006. Contact: David Simons 307–328–4328.

EIS No. 20050499, Final EIS, AFS, MO, Mark Twain National Forest Land and Resource Management Plan, Implementation, Revise to the 1986 Land and Resource Management Plan, several counties, MO. Wait Period Ends: 01/03/2006. Contact: Laura Watts 573–341–7471.

EIS No. 20050500, Draft EIS, AFS, ID, Newsome Creek Watershed Rehabilitation, Stream Restoration and Improvement and Decommissioning of Roads, Red River Ranger District, Nez Perce National Forest, Idaho County, ID. Comment Period Ends: 01/17/2006. Contact: Stephanie Bransford 208–842–2113.

Amended Notices

EIS No. 20050350, Draft EIS, COE, CA, Encinitas/Solana Beach Shoreline Protection Project, To Protect Public Safety and Reduce Storm-Related Damages to Coastal Structures, Cities of Encinitas and Solana Beach, San Diego County, CA. Comment Period Ends: 01/17/2006. Contact: Shannon Dellaquila 213–452–3846. Revision to FR Notice Published 08/26/2005. Comment Period Extended from 10/11/2005 to 01/17/2006.

Dated: November 29, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–23557 Filed 12–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Draft Air Quality Criteria for Lead

[E-Docket ID No. ORD–2004–0018; FRL–8004–3]

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period on a first external review draft.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, ''Air Quality Criteria for Lead; First External Review Draft'' (EPA/600/R–05/144). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of seeking public comment. It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period begins on or about December 1, 2005, and ends February 15, 2006. Technical comments should be in writing and must be received by EPA by February 15, 2006. Comments may be submitted electronically via EPA's E-Docket, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The draft ''Air Quality Criteria for Lead; First External Review Draft'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Air Quality Criteria for Lead; First External Review Draft,'' (EPA/600/R–05/144) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Lori White, Ph.D., NCEA; telephone: 919–541–3146; facsimile: 919–541–1818; or e-mail: *white.lori@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information about the Project/Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act requires subsequent periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Lead is one of six ''criteria'' pollutants for which EPA has established air quality criteria and NAAQS. On November 9, 2004 (69 FR 64926), EPA formally initiated its current review of the criteria and NAAQS for lead, requesting the submission of recent scientific information on specified topics. One of the next steps in this process was to prepare a project work plan for revision of the existing ''Air Quality Criteria for Lead,'' EPA–600/8–83/028aF–dF (published in June 1986) and an associated supplement (EPA–600/8–89/049F) published in 1990. Accordingly, a draft of EPA's ''Project Work Plan for Revised Air Quality Criteria for Lead'' (NCEA–R–1465) was released on January 7, 2005 for public comment (70 FR 1439) and was discussed by the Clean Air Scientific Advisory Committee (CASAC) via a publicly accessible March 28, 2005, teleconference consultation (70 FR 11629). On July 15, 2005 (70 FR 41007), several workshops were announced to discuss, with invited recognized scientific experts, initial draft materials that dealt with various lead-related issues being addressed in the draft AQCD for lead. These workshops were held August 4–5, 16–18, and 17–19, 2005.

After the end of the comment period on the Air Quality Criteria for Lead, First External Review Draft, EPA will

present the draft at a public meeting for review by CASAC. Public comments received will be provided to the CASAC review panel. There will be a **Federal Register** notice to inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Technical Comments to EPA's E-Docket

EPA has established an official public docket for information pertaining to the revision of the Lead AQCD, Docket ID No. ORD–2004–0018. The official public docket is the collection of materials available for public viewing and includes the documents specifically referenced in this action, any public comments received, and other information related to this action, but excludes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, E-Docket. You may use E-Docket at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in E-Docket. Information claimed as CBI and other information for which disclosure is restricted by statute will not be available for public viewing in the official public docket or in E-Docket. EPA's policy is that copyrighted material will not be placed in E-Docket but will be referenced there and will be available as printed material in the official public docket.

If you intend to submit comments to EPA, please note that it is EPA's policy to make public comments available for public viewing as received and without change at the EPA Docket Center or in E-Docket. This policy applies to information submitted electronically or in paper form, except where restricted by copyright, CBI, or statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the official public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to E-Docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in E-Docket. Where practical, physical objects will be photographed, and the photograph will be placed in E-Docket with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits.

If you submit comments electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any submitted disk or CD–ROM, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the person submitting the comment and allows EPA to contact you in case the Agency cannot read your submission due to technical difficulties or needs further information on the substance of your comment. EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in E-Docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, it may delay or preclude consideration of your comment.

Electronic submission of comments to E-Docket is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2004–0018. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention: Docket ID No. ORD–2004–0018. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's E-Docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and in E-Docket.

You may submit comments on a disk or CD–ROM that you mail to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or PDF format. Avoid the use of special characters and any form of encryption.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Dated: November 23, 2005.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E5–6760 Filed 12–1–05; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0280]

General Services Administration Acquisition Regulation; Information Collection; Tax Adjustment Clause 552.270–30

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding tax adjustments under

leasehold acquisitions. This collection requires contractors to submit information to the Government to substantiate an increase or decrease in real estate taxes under a leasehold acquisition so that the Government can make tax adjustments as necessary to the leasehold acquisition. Information collected under this authority is necessary to assess proper tax adjustments against each leasehold acquisition. The clearance currently expires on April 30, 2006.

Public comments are particularly invited on: Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden of the information collection on respondents including through the use of automated collection techniques or other forms of information technology.

DATES: *Comment Due Date:* January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Gerald Zaffos, Contract Policy Division, GSA (202) 208–6091.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0280, Tax Adjustment Clause 552.270–30, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision supply, service, and leasehold acquisitions. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments, measure success in meeting program objectives, or adjust acquisition requirements. Leasehold acquisitions provide for real estate tax adjustments due to changes in real estate taxes on land and buildings occupied by the Government. In a leasehold acquisition, the lessor shall provide the following information regarding real estate taxes: (1) Any notice which may affect the valuation of land and buildings covered by this lease for real estate tax purposes; (2) Any notice of a tax credit or tax refund related to land and buildings covered by this lease; and (3) Each tax bill related to land and building covered by this lease. The lessor is also required to provide the contracting officer a proper invoice including evidence of payment to receive the tax adjustment. Depending on the leasehold acquisition, the tax adjustment can result in either the lessor receiving a credit or the Government receiving a credit.

B. Annual Reporting Burden

Respondents: 7041.
Responses Per Respondent: 1.
Total Responses: 7041.
Hours Per Response: 6.
Total Burden Hours: 42,246.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0280, Tax Adjustment Clause 552.270–30, in all correspondence.

Dated: November 28, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. E5–6738 Filed 12–1–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Public Comment; Public Meetings in Calendar Years 2005 and 2006; Economic Impact of Federal Health Care Regulations

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Notice.

SUMMARY: This notice announces the dates and locations of the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE) Town Hall meetings to be held in calendar years 2005 and 2006 to solicit public comment on quantifying the economic impact of major Federal regulations governing the health care industry. These public meetings provide a forum for interested parties to make oral presentations and/or to submit written comments about the impact of regulations. In particular, commenters are requested to provide an estimate of the economic impact of Federal health care regulations, guidance documents, or paperwork requirements, and also to describe the methods used to calculate the economic impact of the regulations. The Town Hall meetings will be held in several cities across the country to provide an opportunity for input. In addition, individuals may also submit written comments for consideration regardless of their ability to attend the Town Hall meetings.

DATES: *Meeting Dates:* The first Town Hall meeting was held on November 3, 2005, in Washington, DC. The remaining meetings will be held on December 8, 2005 in Chicago, Illinois; January 12, 2006 in Oklahoma City, Oklahoma; and February 2, 2006 in San Francisco, California. Information about the Town Hall meetings and registration procedures are available on the Web site *http://aspe.hhs.gov/arrb/index.shtml*.

Each meeting day will begin at 10 a.m. and end at 3 p.m. (in the respective cities' time zones). On-site registration and sign-up for public comments will open one hour before each meeting. Participants are encouraged to pre-register for the meetings (see below for registration information).

ADDRESSES: The December 8, 2005 Town Hall meeting will be held at: Millennium Knickerbocker Hotel Chicago, 163 East Walton Place @ North Michigan Avenue, Chicago, IL 60611. Telephone: 312–751–8100. Fax: 312–751–9205.

The January 12, 2006 Town Hall meeting will be held at: The Sheraton Oklahoma City, One North Broadway, Oklahoma City, OK 73102. Telephone: 405–235–2780. Fax: 405–232–4782.

The February 2, 2006 Town Hall meeting will be held at: Hilton San Francisco Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133. Telephone: 415–885–4700. Fax: 415–771–8945.

FOR FURTHER INFORMATION CONTACT: Marty McGeein, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Washington, DC 20201. Telephone: (202) 690–6443.

Web site: Additional details regarding the Town Hall meeting process for public comments on the economic impact of Federal health care regulations, along with information on how to register and guidelines for an effective presentation and/or electronic comment submission, can be found on the project Web site at: *http://aspe.hhs.gov/arrb/index.shtml*.

SUPPLEMENTARY INFORMATION:

I. Background

House Appropriations Committee Report 108–636 includes a provision for the Health and Human Services Assistant Secretary for Planning and Evaluation (HHS/ASPE) and the Office of Management and Budget (OMB) to establish an interagency committee, to be coordinated by HHS. The committee's role is to examine major Federal regulations governing the health care industry and to make suggestions regarding how health care regulation could be coordinated and simplified to reduce costs and burdens and improve translation of biomedical research into medical practice, while continuing to protect patients. The interagency committee will examine the economic impact of the major Federal regulations governing the health care industry, and will explore both immediate steps and longer-term proposals for reducing regulatory burden, while maintaining the highest quality health care and other patient protections.

In accord with the House Appropriations Committee's intent, ASPE and OMB have undertaken several complementary activities. The HHS/OMB interagency committee is conducting a comprehensive review of Federal health care regulations, guidance, and paperwork requirements in order to identify areas for reform. In order to facilitate the work of this committee, ASPE and OMB are soliciting public nominations of regulatory reforms in several ways. First, we published a notice in the **Federal Register** on October 4, 2005, soliciting public nominations of reforms. Second, we are holding a series of Town Hall meetings in several cities across the country to provide an opportunity for input from health care administrators, institutional providers, physicians, practitioners, patients, and others about the impact of regulations, and to identify other potential areas for reform.

The purpose of this **Federal Register** notice is to give potential participants in these Town Hall meetings more information regarding how their participation and the information they provide can facilitate the consideration of their suggestions for regulatory reform. In particular, participants in the Town Hall meetings and individuals who submit written comments are requested to provide, to the extent feasible, an estimate of the economic impact of health care regulations, guidance documents, or paperwork requirements, and also to describe the methods used to calculate the economic impact of the regulations. The findings from the Town Hall meetings, other reform nominations and comments from the public, and the subsequent work of the HHS/OMB committee will be synthesized and included in a report to Congress.

II. Registration

Registration Procedures: Registration can be completed online at *http://aspe.hhs.gov/arrb/index.shtml*. To register by telephone, contact Bridgette Saunders of Social and Scientific Systems at (301) 628–3158. (Social and Scientific Systems is the Contractor to HHS/ASPE to provide logistical support for the Town Hall meetings.) The following information must be provided when registering: Name, organization name and address, and consent to publish contact information on a participants list and other reports to document the Town Hall Meeting. A Social & Scientific Systems, Inc. staff member will confirm your registration by mail, e-mail, or fax.

III. Presentations and Comment Format

A. ''5-Minute'' Public Comment Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations. We ask that commenters focus on the economic impacts of health care regulations, and quantify these impacts to the extent possible. Depending on the number of persons who sign up to make public comments, we will decide whether additional time will be allotted. In order to offer the same opportunity to all attendees, there is no pre-registration for 5-minute speakers. Attendees can sign up only on the day of the meeting to make a 5-minute presentation. They must provide their name, title, and organization name on the sign-up sheet, and identify the general area of health care regulation that they will address.

B. Written Comments From Meeting Attendees

Written comments are welcome from the public regardless of attendance at a Town Hall Meeting or whether they make an oral presentation at a Town Hall Meeting. Written comments can be submitted either at the meeting, or before or after the meeting via e-mail to the mailboxes specified on the project Web site: *http://aspe.hhs.gov/arrb/index.shtml* or via regular mail to Marty McGeein, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Washington, DC 20201. Please note that electronic submissions are preferred due to delays in receiving U.S. Postal Mail. We are able to consider only those comments received in writing and/or via e-mail by 5 p.m. EST on February 9, 2006.

IV. Special Accommodations

Individuals attending a meeting who are hearing- or visually-impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information when registering for the meeting and accommodations will be made.

Dated: November 29, 2005.

Donald Young,

Acting Assistant Secretary for Planning and Evaluation (ASPE), HHS.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs (OIRA), OMB.

[FR Doc. 05–23582 Filed 12–1–05; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10001, CMS–10009, CMS–10167, and CMS–10062]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPAA Nondiscrimination Provisions (Regulation HCFA 2022–IFC); *Form*

Number: CMS–10001 (OMB#: 0938–827); *Use:* The provisions of Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are designed to make it easier for people to access health care coverage; to reduce the limitations that can be put on the coverage; and to make it more difficult for issuers to terminate the coverage. Title I provisions are divided into group and individual market protections. The group provisions apply to employment-related group health plans and to the issuers who sell insurance in connection with group health plans. Section 2702 of the Public Health Service Act (PHS Act) (the HIPAA nondiscrimination provisions) establish rules generally prohibiting group health plans and group health insurance issuers from discriminating against individual participants or beneficiaries based on any health factor of such participants or beneficiaries.; *Frequency:* Third party disclosure, Reporting—Annually; *Affected Public:* Business or other-for-profit, Individuals or Households, Not-for-profit institutions, Federal government, and State, Local, or Tribal Government; *Number of Respondents:* 18; *Total Annual Responses:* 18; *Total Annual Hours:* 194.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPAA Nondiscrimination Provisions (Regulation HCFA 2078–P); *Form Number:* CMS–10009 (OMB#: 0938–819); *Use:* The provisions of Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are designed to make it easier for people to access health care coverage, to reduce the limitations that can be put on the coverage, and to make it more difficult for issuers to terminate the coverage. Title I provisions are divided into group and individual market protections. The group provisions apply to employment-related group health plans and to the issuers who sell insurance in connection with group health plans. Section 2702 of the Public Health Service Act (PHS Act—the HIPAA nondiscrimination provisions) establish rules generally prohibiting group health plans and group health insurance issuers from discriminating against individual participants or beneficiaries based on any health factor of such participants or beneficiaries.; *Frequency:* Third party disclosure, Reporting—Annually; *Affected Public:* Business or other-for-profit, Individuals or Households, Not-for-profit institutions, Federal government, and State, Local, or Tribal Government; *Number of Respondents:* 2600; *Total Annual Responses:* 2600; *Total Annual Hours:* 100.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Competitive Acquisition Program (CAP) for Medicare Part B Drugs: CAP Physician Election Agreement; *Form Number:* CMS–10167 (OMB#: 0938–NEW); *Use:* Beginning in 2006, physicians will have a choice between acquiring and billing for Part B covered drugs under the Average Sales Price (ASP) drug payment methodology or electing to receive these drugs from vendors/suppliers selected for the CAP through a competitive bidding process. The provisions for this new payment system are described in the proposed rule entitled, ''Medicare Program; Competitive Acquisition of Outpatient Drugs and Biologicals Under Part B,'' that published March 4, 2005 (70 FR 10746), the interim final rule entitled, ''Medicare Program; Competitive Acquisition of Outpatient Drugs and Biologicals Under Part B,'' that published July 6, 2005 (70 FR 39022), and the final rule entitled, ''Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006,'' that published on November 21, 2005. Competitive bidding is seen as a means of using the dynamics of the marketplace to provide incentives for suppliers to provide reasonably priced products and services of high quality in an efficient manner. The CAP's objectives include the following: 1) to provide an alternative method for physicians to obtain Part B drugs to administer to Medicare beneficiaries; and 2) to reduce drug acquisition and billing burdens for physicians; *Frequency:* Reporting—Annually; *Affected Public:* Business or other-for-profit; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 20,000.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Collection of Diagnostic Data from Medicare Advantage Organizations for Risk Adjusted Payments Supporting Regulations 42 CFR Part 422 Subparts F and G and 42 CFR Part 423 Subparts F and G; *Form Number:* CMS–10062 (OMB#: 0938–0878); *Use:* Under the Medicare Prescription Drug Benefit, Improvement and Modernization Act of 2003 (MMA), the Congress restructured the M+C program into the Medicare Advantage (MA) program, Part C, and added an outpatient prescription drug benefit, Part D. In accordance with mandates in these laws, the Secretary of the Department of Health and Human Services must implement health status risk adjustment, a payment methodology for Parts C and D that takes into account the health status of plan enrollees. CMS collects inpatient and outpatient data. Part C data is collected using the CMS–HCC (hierarchical condition category) model. Part D data will be collected using the CMS Rx-HCC model. The Rx-HCC model is different from the CMS–HCC model primarily in that it predicts plan liability for drug costs instead of medical/surgical costs for service under Parts A and B. CMS will use the data to make risk adjusted payment under Parts C and D. MA plans, Medicare Advantage Prescription Drug (MA–PD) plans, and stand-alone Prescription Drug Plans (PDP's) will use the data to develop their Parts C and D bids.; *Frequency:* Reporting—Quarterly; *Affected Public:* Business or other-for-profit and Not-for-profit institutions; *Number of Respondents:* 505; *Total Annual Responses:* 14,091,370; *Total Annual Hours:* 8,351.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on January 31, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 17, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–23414 Filed 12–01–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1500 (12–90), CMS–1490–U, CMS–1490–S, CMS–1500 (08–05)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Common Claims Form and Supporting Regulations at 42 CFR Part 424, Subpart C; *Form Number:* CMS–1500 (12–90), CMS–1490–U, CMS–1490–S (OMB#: 0938–0008); *Use:* The Form CMS–1500 answers the needs of many health insurers. It is the basic form prescribed by CMS for the Medicare program and is only accepted from physicians and suppliers that are excluded from the mandatory electronic claims submission requirements set forth in the Administrative Simplification Compliance Act (ASCA) Pub. L. 107–105 and the implementing regulation at 42 CFR 424.32. The Medicaid State Agencies, CHAMPUS/TriCare, Office of Workers' Compensation Programs (OWCP), U.S. Railroad Retirement Board (RRB), Blue Cross/Blue Shield Plans, the Federal Employees Health Benefit Plan, and several private health plans also use it; it is the *de facto* standard ''professional'' claim form. CMS is seeking re-approval of the CMS–1500 (12/90), CMS–1490–U, and the CMS–1490–S forms.; *Frequency:* Reporting—On occasion; *Affected Public:* State, Local, or Tribal Government, Business or other-for-profit, Not-for-profit institutions; *Number of Respondents:* 902,378; *Total Annual Responses:* 957,204,707; *Total Annual Hours:* 46,383,364.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Health Insurance Common Claims Form and Supporting Regulations at 42 CFR Part 424, Subpart C; *Form Number:* CMS–1500 (08–05), CMS–1490–S (OMB#: 0938–NEW); *Use:* CMS is simultaneously seeking approval for form CMS–1500 (08–05) and the CMS–1500 (12–90). A concurrent approval for the two forms is needed to allow the industry to prepare for the conversion, *i.e.* computer system conversions and mass printing of the form CMS–1500 (08–05). The CMS–1500 (08–05) will be accepted beginning in October, 2006. Its use will be mandatory in 2007. In 2007, the CMS–1500 (12–90) and the corresponding OMB control number will be discontinued. The Form CMS–1500 answers the needs of many health insurers. It is the basic form prescribed by CMS for the Medicare program and is only accepted from physicians and suppliers that are excluded from the mandatory electronic claims submission requirements set forth in the Administrative Simplification Compliance Act (ASCA) Pub. L. 107–105 and the implementing regulation at 42 CFR 424.32. The Medicaid State Agencies, CHAMPUS/TriCare, Office of Workers' Compensation Programs (OWCP), U.S. Railroad Retirement Board (RRB), Blue Cross/Blue Shield Plans, the Federal Employees Health Benefit Plan, and several private health plans also use it; it is the *de facto* standard ''professional'' claim form.; *Frequency:* Reporting—On occasion; *Affected Public:* State, Local, or Tribal Government, Business or other-for-profit, Not-for-profit institutions; *Number of Respondents:* 902,378; *Total Annual Responses:* 957,204,707; *Total Annual Hours:* 46,383,364.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on January 31, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 23, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–23596 Filed 12–1–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

RIN 1660–ZA10

Application Period for the Assistance Program Under the 9/11 Heroes Stamp Act of 2001

AGENCY: United States Fire Administration (USFA), Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The 9/11 Heroes Stamp Act of 2001 directed the United States Postal Service to issue a semipostal stamp and distribute the proceeds through the Federal Emergency Management Agency to the families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001. This notice announces the application period for the Assistance Program Under the 9/11 Heroes Stamp Act of 2001.

DATES: The application period for the Assistance Program Under the 9/11 Heroes Stamp Act of 2001 starts on December 2, 2005 and closes on March 29, 2006.

FOR FURTHER INFORMATION CONTACT: Tom Olshanski, Heroes Stamp, USFA, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, MD 21727, or call 1–866–887–9107, or send e-mail to *FEMA-HeroesStamp@dhs.gov*.

SUPPLEMENTARY INFORMATION: The 9/11 Heroes Stamp Act of 2001, Public Law 107–67, sec. 652, 115 Stat. 514 (Nov. 12, 2001) (Heroes Stamp Act), directed the United States Postal Service to issue a semipostal stamp and distribute the proceeds through the Federal

Emergency Management Agency (FEMA) to the families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001. FEMA issued an interim final rule as the mechanism by which it will distribute the Heroes Stamp Act funds. *See* 70 FR 43214, July 26, 2005.

The application period for the Assistance Program Under the 9/11 Heroes Stamp Act of 2001 starts on December 2, 2005 and closes on March 29, 2006. A copy of the application may be downloaded from *http://www.usfa.fema.gov* or you may obtain a copy by writing to Heroes Stamp, USFA, NETC, 16825 South Seton Avenue, Emmitsburg, MD 21727.

If you have questions, please call the toll free Helpline at 1–866–887–9107 or e-mail your questions to *fema-heroesstamp@dhs.gov*. For further information, please see *http://www.usfa.fema.gov*.

(The Catalog of Federal Domestic Assistance (CFDA) Number is 97.085.)

Dated: November 28, 2005.

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–6749 Filed 12–1–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

United States Citizenship and Immigration Services

Agency Information Collection Activities: Revised Collection; Comment Request

ACTION: 30-day notice of information collection under review; Application for Authorization to Issue Certification for Health Care Workers and Related Requirements; Form I–905.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 30, 2005 at 70 FR 57312, allowing for a 60-day public review and comment period on the proposed revised form. No comments were filed.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 3, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0062 in the subject box. Written comments and suggestion from the public and affected agencies 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 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, 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 on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Certification for Health Care Workers and Related Requirements.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–905, Business and Trade Services, Program and Regulations Development, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected on this form is used by USCIS to determine eligibility of an organization to issue certificates to foreign health care workers. It also provides the requirements for the data that shall be displayed on all health care certificates that will be used by a benefit granting agency. The information must be contained on each certificate issued by a certifying body in order for the certificate to be valid. This data requirement was established under OMB Control Number 1615–0062. That information collection was published as an Information Collection Request (no agency form) at 68 FR 43901 (Final rule: Certificates for Certain Health Care Workers, July 25, 2003).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 21,010 responses at 7.6 hours per response. This number includes the anticipated amount of certificates that will be issued by a benefit granting agency as the information collection now includes the requirements that must be met in order for a certificate to be valid.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 37,280 annual burden hours. This number is increased as explained in item 5 above.

(7) *Other Information:* This submission combines the information collection previously approved under OMB Control No. 1615–0062 and Form I–905 [OMB Control No. 1615–0086].

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: November 29, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security.

[FR Doc. 05–23567 Filed 12–1–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–48]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess, and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 23, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–23466 Filed 12–1–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Recovery Plan for Six Mobile Basin Aquatic Snails

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the final recovery plan for six Mobile Basin aquatic snails. The six snails included in the recovery plan are: the endangered cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyriam showalteri*), and plicate rocksnail (*Leptoxis ampla*); and the threatened painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*). All are endemic to the Mobile River Basin (Basin) where they inhabit shoals, rapids and riffles of large streams and rivers above the Fall Line. All six species have disappeared from more than 90 percent of their historic ranges as a result of impoundment, channelization, mining, dredging, and pollution from point and non-point sources. The final recovery plan includes specific recovery objectives and criteria to be met in order to reclassify (downlist) the cylindrical lioplax, flat pebblesnail, and plicate rocksnail to threatened species and for the eventual delisting of all six species under the Endangered Species Act of 1973, as amended (Act).

ADDRESSES: You may obtain a copy of this recovery plan by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213 (telephone 601/965–4900), or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans*.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (telephone 601/321–1125).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1998, (63 FR 57610), we listed six aquatic snails, in the Mobile River Basin, as threatened (painted rocksnail, round rocksnail, lacy elimia) or endangered (cylindrical lioplax, flat pebblesnail, plicate rocksnail) under the Act. These six snails are endemic to portions of the Mobile River Basin in central Alabama. The cylindrical lioplax, flat pebblesnail, and round rocksnail are found in the Cahaba River drainage; the lacy elimia and painted rocksnail are in the Coosa River drainage; and the plicate rocksnail is in the Black Warrior River drainage. These snails require rock, boulder, or cobble substrates and clean, unpolluted water and are found on shoals and riffles of large streams and rivers. Impoundment and water quality degradation have eliminated the six snails from 90 percent or more of their historic habitat. Known populations are restricted to small portions of stream drainages. These surviving populations are currently threatened by pollutants such as sediments and nutrients that wash into streams from the land surface.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. A notice of availability of the technical agency draft recovery plan for six Mobile Basin aquatic snails was published in the **Federal Register** on January 18, 2005 (70 FR 2879). A 60-day comment period was opened with the notice, closing on March 21, 2005. We received comments from two interested parties. Comments and information submitted were considered in the preparation of this final plan and, where appropriate, incorporated.

The cylindrical lioplax, flat pebblesnail, and plicate rocksnail, will be considered for reclassification to threatened status when the following criteria are met:

1. The existing population has been shown to be stable or increasing over a period of 10 years (2 to 5 generations). This may be measured by numbers/area, catch per unit/effort, or other methods developed through population monitoring, and must be demonstrated through annual monitoring.

2. There are no apparent or immediate threats to the listed population (see Listing/Recovery Criteria, below).

3. A captive population has been established at an appropriate facility, and the species has been successfully propagated.

4. A minimum of two additional populations have been established (or discovered) within historic range.

The lacy elimia, round rocksnail, painted rocksnail, cylindrical lioplax, flat pebblesnail, and plicate rocksnail will be considered for delisting when:

1. A minimum of three natural or re-established populations have been shown to be persistent (i.e., stable or increasing) for a period of 10 years (2 to 5 generations).

2. There are no apparent or immediate threats to the populations (see Listing/Recovery Factor Criteria, below).

The objective of this final plan is to provide a framework for the recovery of these six aquatic snails so that protection under the Act is no longer necessary. As reclassification and recovery criteria are met, the status of these species will be reviewed and they will be considered for reclassification or removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 8, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E5–6759 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–038–1220-AL; HAG 06–0011]

Notice of Call for Nominations for the National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Call for nominations.

SUMMARY: The Bureau of Land Management is requesting public nominations to fill an unexpired term on the National Historic Oregon Trail Interpretive Center Advisory Board. The National Historic Oregon Trail Interpretive Center Advisory Board provides advice regarding management, use, and further development of the National Historic Oregon Trail Interpretive Center. The Bureau of Land Management will consider public nominations until January 17, 2006.

DATES: Send all nominations to the address listed below no later than January 17, 2006.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the location to send nominations.

FOR FURTHER INFORMATION CONTACT: Pam Robbins, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, (503) 808–6306, e-mail: *pam_robbins@blm.gov.*

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the Bureau of Land Management. The National Historic Oregon Trail Interpretive Center Advisory Board is a citizen-based advisory council that is consistent with the requirements of the Federal Advisory Committee Act. Members serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for government employees. As required by the Federal Advisory Committee Act, board membership must be balanced and representative of the various interests concerned with the management of public lands. The unexpired term to be filled is a representative of trail advocacy groups. The term expiration is December 29, 2006. Individuals may nominate themselves or others to serve on the National Historic Oregon Trail Interpretive Center Advisory Board. Nominees must be residents of Oregon. The Bureau of Land Management will evaluate nominees in coordination with the Governor of the State of Oregon, based on their education, training, and experience and their knowledge of the National Historic Oregon Trail Interpretive Center. The Bureau of Land Management will forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments. The following must accompany all nominations:

—Letters of reference from trail advocacy group(s),

—A completed background information nomination form,

—Any other information that speaks to the nominee's qualifications.

Nomination forms are available from Pam Robbins, P.O. Box 2965, 333 SW., First Avenue, Portland, Oregon 97208–2965, (503) 808–6306, email: *pam_robbins@blm.gov.* Completed applications should be sent to the same address.

Dated: October 20, 2005.

David R. Henderson,

Vale District Manager, OR/WA BLM.

[FR Doc. E5–6777 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990]

Notice of Intent To Prepare an Environmental Impact Statement To Analyze the Proposed Amendment to the Pipeline/South Pipeline Plan of Operations (NVN–067575) for the Cortez Hills Expansion Project

AGENCY: Bureau of Land Management, Department of Interior.

COOPERATING AGENCY Nevada Department of Wildlife. Consultation is ongoing with the Environmental Protection Agency on Cooperating Agency status.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement to analyze the Proposed Amendment to the Pipeline/South Pipeline Plan of Operations (NVN–067575) for the Cortez Hills Expansion Project, Lander and Eureka Counties, Nevada, and notice of scoping period.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management's (BLM's) Battle Mountain Field Office will be directing the preparation of an Environmental Impact Statement (EIS) to analyze proposed pit and process facility expansions and development of a new open-pit gold mine and associated facilities, in Lander and Eureka counties, Nevada. The EIS will be prepared by a third-party contractor directed by the BLM and funded by the proponent, Cortez Gold Mines. The project will involve public and private lands in Lander and Eureka counties, Nevada. The BLM invites comments and suggestions on the scope of the analysis.

DATES: This notice initiates the public scoping process. Comments on the scope of the EIS can be submitted in writing to the address below and must be post-marked or otherwise delivered by 4:30 p.m. on January 3, 2006. Scoping meetings will be held in Crescent Valley and in Battle Mountain, Nevada. All scoping meetings will be announced through the local news media, newsletters or flyers, at least 15 days prior to each event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days after the meeting to any participants who wish to clarify the views they expressed.

The purpose of the public scoping meetings is to identify issues to be addressed in the EIS, and to identify potentially viable alternatives that address these issues. BLM personnel will be present to explain the NEPA process, mining regulations, and other requirements for processing the proposed Plan of Operations Amendment and the associated EIS. Representatives of Cortez Gold Mines will also be available to describe their proposal.

ADDRESSES: Written scoping comments should be sent to the Bureau of Land

Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820, ATTN: Chris Worthington. Written comments may also be faxed to Chris Worthington at (775) 635–4034. Documents pertinent to this proposal as well as comments, including names and street addresses of respondents, may be examined at the Battle Mountain Field Office during regular business hours (7:30 a.m.–4:30 p.m. Monday through Friday, except holidays). Comments may be published as part of the EIS.

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: Chris Worthington, Planning and Environmental Coordinator, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820 (775) 635–4144.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines (CGM), on behalf of the Cortez Joint Venture, proposes to expand its Pipeline/South Pipeline Project, an existing open-pit gold mining and processing operation. The Pipeline/South Pipeline Project is located in north-central Nevada approximately 31 miles south of Beowawe in Lander County.

The proposed Cortez Hills Expansion Project (Project) is located within Township 27 North (T27N), Range 47 East (R47E); T27N, R46E; T26N, R47E; T26N, R48E; T28N, R46E; and T28N, R47E in Lander and Eureka counties. The currently authorized disturbance area associated with the Pipeline/South Pipeline Project is 9,103 acres. Approximately 6,139 additional acres of disturbance would occur as a result of the proposed mine expansion, most of which would occur on federal land administered by the Bureau of Land Management Battle Mountain Field Office.

The project would involve the construction and development of the following primary components in the Cortez Hills and Cortez Mine area: New open pit for development of the Cortez Hills and Pediment ore zones with an in-pit groundwater dewatering system; expansion of existing Cortez Mine open pits; two new heap leach facilities with associated solution ponds and two carbon-in-column facilities; new ore, subgrade ore, and growth media stockpiles; two new waste rock disposal facilities; expansion of the existing waste rock disposal facility at the Cortez Mine; new ancillary facilities (maintenance shop, administrative facilities, and fuel and lubricant storage facilities); new primary crusher, stock pile area, and 12-mile conveyor system; expansion of the existing tailings facility at the Cortez Mill; new water supply well(s) and associated power line and pipeline; potential new cross-valley water pipelines; Horse Canyon haul road modifications; relocation of existing county road and relocation of existing 69–kV transmission line segments in the project area; installation of a new 120–kV transmission line and substation; new borrow area; and construction of a new land fill and reactivation of the existing landfill near the Cortez Mill.

The project also would involve the construction or modification of the following primary components in the Pipeline/South Pipeline and Gold Acres areas:

Expansion of the existing Pipeline waste rock disposal facility, relocation of the existing county road around the waste rock disposal facility expansion area, expansion of the existing Pipeline/South Pipeline open pit, and an increase in the Pipeline Mill processing capacity from the currently permitted 13,500 tons per day (tpd) to an average of 15,000 tpd.

CGM proposes to mine the ore body in the Cortez Hills Expansion area concurrently with their existing Pipeline/South Pipeline ore bodies. Although a portion of the ore from the Cortez Hills Expansion area may be processed at the existing Cortez and/or Pipeline mills, the primary method of processing would be heap leaching at the Cortez Hills site. Construction and operation of the Cortez Hills Expansion Project is anticipated to be initiated in 2007. The life of the mine would include approximately 10 years of active mining and an additional 3 years for on-going ore processing. Concurrent reclamation would be conducted during this period as areas become available. Site closure and final reclamation would continue for a few additional years.

Potential significant direct, indirect, residual, and cumulative impacts from the proposed action will be analyzed in the EIS. Significant issues to be addressed in the EIS include dewatering activities, cultural and native American issues, and visual impacts. Additional issues to be addressed may arise during the scoping process. Federal, state, and local agencies, and other individuals or organizations that may be interested in or affected by the BLM's decision on this Plan of Operations amendment are invited to participate in the scoping process.

Dated: October 26, 2005.

Gerald M. Smith,

Field Manager, Battle Mountain Field Office.

[FR Doc. E5–6768 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC62571]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC62571 from Red Willow Production Company for lands in Jackson County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC62571 effective April 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 16, 2005.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E5–6766 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC62570]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC62570 from Red Willow Production Company for lands in Jackson County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC62570 effective April 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 16, 2005.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E5–6778 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–923–1310–FI; NVN–61536; 6–08808]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease NVN–61536 for lands in Nye County, Nevada, was timely filed and was accompanied by all the required rentals accruing from April 1, 2005, the date of termination.

No valid lease has been issued affecting the lands. The lessee, Deerfield Production Corporation, has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. Deerfield Production Corporation has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. Deerfield Production Corporation has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective April 1, 2005, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Elaine Lewis, BLM Nevada State Office, 775–861–6537.

Del Fortner,

Deputy State Director, Minerals Management.

[FR Doc. E5–6767 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–923–1310-FI; NVN–61503; 6–08808]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease NVN–61503 for lands in Eureka County, Nevada, was timely filed and was accompanied by all the required rentals accruing from April 1, 2005, the date of termination.

No valid lease has been issued affecting the lands. The lessee, Deerfield Production Corporation, has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. Deerfield Production Corporation has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. Deerfield Production Corporation has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective April 1, 2005, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Elaine Lewis, BLM Nevada State Office, 775–861–6537.

Del Fortner,

Deputy State Director, Minerals Management.

[FR Doc. E5–6774 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144596]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Wold Oil Properties, Inc. of competitive oil and gas lease WYW144596 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent,

respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease effective April 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E5–6769 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW133248]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Discovery Exploration, Inc. and EnRe Corporation of noncompetitive oil and gas lease WYW133248 for lands in Park County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW133248 effective August 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E5–6771 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144595]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Wold Oil Properties, Inc. of competitive oil and gas lease WYW144595 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144595 effective April 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E5–6772 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM220–1430 EU; NM–107550 and NM–109938]

Direct Sale of Public Land in Rio Arriba and Santa Fe County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a direct (non-competitive) sale of two parcels of public land, 1.21 acres located in Rio Arriba County and 0.50 acres located in Santa Fe County, New Mexico. The described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), as amended, at no less than the appraised fair market value. These sales will resolve the inadvertent trespass by the Heirs of Benerito Ortega (Rio Arriba County) and Joseph Chipman (Santa Fe County).

DATES: Interested parties may submit comments to the Taos Field Office Manager at the address below. Comments must be received by not later than January 17, 2006. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this Notice to Sam DesGeorges, Taos Field Office Manager, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, Realty Specialist at the above address or (505) 758–8851.

SUPPLEMENTARY INFORMATION: The following described public land in Rio Arriba and Santa Fe County, New Mexico have been determined to be suitable for sale at not less than fair market value under Section 203 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750, 43 U.S.C. 1713 and 1719). It has been determined that these lands are difficult to economically manage as part of the public lands. The BLM is also proposing the sales to resolve the inadvertent trespasses. It has been determined that resource values will not be affected by the disposal of these two parcels of public land.

The parcels are described as:

New Mexico Principal Meridian

Rio Arriba County

T. 23 N., R. 10 E.,
Section 28, lot 19.

The area described (NM–109938) contains 1.21 acres, more or less. The market value for this land utilizing direct sales procedures, at not less than the appraised fair market value, is determined to be $8,470.00.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890 and a reservation for all minerals.

New Mexico Principal Meridian

Santa Fe County

T. 20 N., R. 9 E.,
Section 3, lot 6.

The area described (NM–107550) contains 0.50 acres, more or less. The market value for utilizing direct sales procedures at not less than the appraised fair market value is determined to be $28,000.00.

The two parcels are being offered by direct sale to The Heirs of Benerito Ortega (NM–109938) of Rio Arriba County and Joseph Chipman (NM–107550) of Santa Fe County, New Mexico, under the authority of 43 CFR 2711.3–3, based on historic use and added improvements. Both of the parcels of land have been used as residences for many years as home sites. Failure or refusal by the Heirs of Benerito Ortega and/or Joseph Chipman to submit the required fair market appraisal amount within 180 days of the sale of the land will constitute a waiver of this preference consideration and this land may be offered for sale on a competitive or modified competitive basis.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the general mining laws. The segregation will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

Comments must be received by the BLM Taos Field Manager, Taos Field Office, at the address stated above, on or before the date stated above. Any adverse comments will be reviewed by the Taos Field Manager, who may sustain, vacate or modify this realty action. In the absence of any objects, or adverse comments, this proposed realty action will become final determination of the Department of the Interior. Authority for this proposed direct sale is found in 43 CFR subpart 2710, subpart 2711.3–3.

Sam DesGeorges,

Field Office Manager.

[FR Doc. E5–6776 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–330–06–1232–EA, AZ–SRP–330–06–01 and AZ–SRP–330–06–02]

Temporary Closure of Selected Public Lands in La Paz County, AZ, During the Operation of the 2006 Parket 250 and Parket 425 Desert Races

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected public lands in La Paz County, Arizona, during the operation of the 2006 Parker 250 and Parker 425 Desert Races.

SUMMARY: The Bureau of Land Management (BLM) Lake Havasu Field Office announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the officially permitted running of the 2006 Parker 250, and the 2006 Parker 425 Desert Races. Areas subject to this closure include all public land, including county maintained roads and highways located on public lands, that are located within two miles of the designated racecourse. The racecourse and closure areas are described in the Supplementary Information section of this notice. Maps of the designated racecourse are maintained in the Bureau of Land Management Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406.

EVENT DATES: Parker 250 on January 7, 2006, and Parker 425 on February 4, 2006.

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, Field Staff Law Enforcement Ranger, BLM Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (928) 505–1200.

SUPPLEMENTARY INFORMATION:

Description of Race Course Closed Area

Beginning at the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, the course runs east along Shea Road, then east along the Parker-Swansea Road to the Central Arizona Project Canal (CAP), then north on the west side of the CAP Canal, crossing the canal on the county-maintained road, running northeast into Mineral Wash Canyon, then southeast on the county-maintained road, through the four-corners intersection to Midway, then east on Transmission Pass Road, through State Trust lands located in Butler Valley, turning north into Cunningham Wash to North Tank; continuing back south to the Transmission Pass Road and east (reentering public land) within two miles of Alamo Dam Road. The course turns south and west onto the wooden power line road, onto the State Trust lands in Butler Valley, turning southwest into Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west onto public lands proceeding west to the ''Bouse Y'' intersection, located two miles north of Bouse, Arizona. The course then proceeds north, paralleling the Bouse-Midway Road to the Midway Pit. From Midway, it goes west on the north boundary road of the East Cactus Plain Wilderness Area to Parker-Swansea Road. The course then goes west in Osborne Wash, south of the Parker-Swansea Road to the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area, staying in Osborne Wash, it proceeds west in Osborne Wash to the CRIT Reservation boundary.

Times of the Temporary Land Closure

The Parker 250 Desert Race closure is in effect from 2 p.m. (MST) on Friday, January 06, 2006, through 6 p.m. (MST) on Saturday, January 7, 2006. Parker 425 Desert Race closure is in effect from 2 p.m. (MST) on Friday, February 3, 2005, through 11:59 p.m. (MST) on Saturday, February 4, 2006.

Prohibited Acts

The following acts are prohibited during the temporary land closure:

1. Being present on, or driving on, the designated racecourse. This does NOT apply to race participants, race officials, or emergency vehicles authorized by or operated by local, State and Federal government agencies. Emergency medical response shall only be conducted by personnel and vehicles operating under the guidance of La Paz County Emergency Medical Services (EMS) or the Arizona Department of Health Sciences. These EMS vehicles may also be on the course to serve emergency medical needs.

2. Vehicle parking or stopping in areas affected by the closure, except where such is specifically allowed (designated spectator areas).

3. Camping in any area, except in the designated spectator areas.

4. Discharge of firearms.

5. Possession or use of any fireworks.

6. Cutting or collecting firewood of any kind, including dead and down wood or other vegetative material.

7. Operating any vehicle (except registered race vehicles), including off-highway vehicles, not registered and

equipped for street and highway operation.

8. Operating any vehicle in the area of the closure at a speed of more than 35 mph. This does not apply to registered race vehicles during the race, while on the designated racecourse.

9. Failure to obey any official sign posted by the Bureau of Land Management, LaPaz County, or the race promoter. Violations will be enforced under applicable State and Federal Statutes.

10. Parking any vehicle in a manner that obstructs or impedes normal traffic movement.

11. Failure to obey any person authorized to direct traffic, including law enforcement officers, BLM officials and designated race officials.

12. Failure to observe Spectator Area quiet hours of 10 p.m. to 6 a.m.

13. Failure to keep campsite or race viewing site free of trash and litter.

14. Allowing any pet or other animal to be unrestrained by a leash of not more than 6 feet in length.

The above restrictions do not apply to emergency vehicles owned by the United States, the State of Arizona, or La Paz County. Emergency medical response shall only be conducted by personnel and vehicles operating under applicable Federal, State or local jurisdictions. Authority for closure of public lands is found in 43 CFR 8340, subpart 8341; 43 CFR 8360, Subpart 8364.1; 43 CFR subpart 9268 and 43 CFR 2930. Persons who violate this closure order are subject to arrest, and upon conviction may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

Timothy Z. Smith,

Field Manager, BLM Lake Havasu Field Office.

[FR Doc. E5–6773 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1220–MA]

Notice of Temporary Restriction Order

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Arcata Field Office will establish temporary restrictions pursuant to the Code of Federal Regulations, Title 43, Subpart 8364.1 to effectively implement interim management guidelines for certain BLM-administered public lands hereafter referred to as ''Ma-le'l Dunes'', located in Township 6 North, Range 1 West, portions of Sections 26, 27, 34, and 35, Humboldt County, California. Ma-le'l Dunes consists of approximately 150 acres and is located along the coastline nearly two miles west of Arcata, CA. These restrictions are needed on a temporary basis until a Resource Management Plan (RMP) Amendment, beginning in 2008, is completed for the area. The area is now open to dispersed recreation uses with an emphasis placed on accommodating pedestrian and equestrian access to the coastline. The temporary restrictions are as follows:

The parking/picnic area will be closed to vehicles from one hour after sunset to sunrise;

Equestrian use will be allowed on designated trails and the waveslope;

Pedestrian use will be allowed on designated trails, open sandy areas, and the waveslope;

Dogs must be leashed in the developed recreation site (parking/picnic area); otherwise dogs will be allowed off-leash consistent with the Humboldt County ordinance;

Group camping will be allowed on a case by case basis under Special Recreation Permit guidelines. Criteria for determining permit issuance include: (1) Size of group, (2) number of permits per month, (3) purpose of event (does it benefit the overall community in some way). Additional criteria may be developed as an adaptive management measure;

Vegetative gathering for personal use will be allowed from May to November along designated trails. Off-trail gathering will require a permit during this same time period;

Fires will be allowed in designated sites (fire rings) only;

The area will be open to day use, from sunrise to one hour after sunset. Overnight camping will not be allowed except by permit.

Employees, agents and permitees of the BLM may be exempt from these restrictions for administrative and emergency purposes only.

Penalties include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. These restrictions are necessary to (1) Protect aquatic and terrestrial species from the effects of unregulated impacts, (2) ensure public safety, (3) reduce the potential for wildfires in this wildland urban interface, and (4) minimize inadvertent trespass onto adjoining private property. They will remain in effect until a formal planning process, with full public participation, is completed.

DATES: These restrictions will be effective once they are posted at the designated site location and BLM Arcata Field Office.

ADDRESSES: Maps and supporting documentation are available for review at the following location: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, BLM, Arcata Field Manager, 1695 Heindon Road, Arcata, CA 95521. Ms. Roush may also be contacted by telephone: (707) 825–2300.

SUPPLEMENTARY INFORMATION: The BLM recently acquired this 38-acre parcel adjacent to its existing 112 acres and developed a parking and picnic area to accommodate an increased demand for pedestrian and equestrian access to the beach. The anticipated increased visitor use will have unacceptable adverse impacts on significant resource values, including impacts on endangered plant species, if temporary restrictions are not initiated.

By taking this interim action, BLM provides responsible public access and recreation uses, while contributing to the conservation of two endangered species in accordance with Section 7(a)(1) of the Endangered Species Act (ESA), 16 U.S.C 1536(a)(1). These restrictions will be posted in the BLM Arcata Field Office and at places near and/or within the affected public lands.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. E5–6770 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST; Group No. 174, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 141 N., R. 38 W.

The plat of survey represents the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines; and the survey of the subdivision of section 18, Township 141 North, Range 38 West, of the Fifth Principal Meridian, Minnesota, and was accepted November 23, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 23, 2005.

Jerry L. Wahl,

Chief Cadastral Surveyor.

[FR Doc. E5–6762 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Safety Modifications for Folsom Dam and Appurtenant Structures (Folsom Safety of Dams Project)—Sacramento, El Dorado, and Placer Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change to public scoping meeting dates and locations.

SUMMARY: The notice of intent to prepare an environmental impact statement (EIS) and notice of public scoping meetings was published in the **Federal Register** on October 6, 2005 (70 FR 58469). The Bureau of Reclamation is changing the public scoping meeting dates from November 1 and 3, 2005, to December 12 and 14, 2005. The scoping meeting locations have also changed.

DATES: The new meeting dates are:

- December 12, 2005, 5 to 7 p.m., Granite Bay Activity Center, Folsom State Recreation Area, CA.
- December 14, 2005, 5:30 to 8 p.m., Folsom, CA.

ADDRESSES: The new locations are:

- Granite Bay Activity Center, Folsom State Recreation Area—there is no address for this location. Directions follow:

From Highway 50

(1) Take Hazel Avenue exit and head north for 2 miles;

(2) Turn right on Madison Avenue (becomes Greenback Lane at the car dealership) and head east a little over 2.5 miles;

(3) Turn left on Folsom-Auburn Road and head north for 5 miles (if you go over the bridge, you went too far);

(4) Turn right on Douglas Boulevard;

(5) Go past the State Park's entrance station kiosk;

(6) Turn right at the 2nd stop sign; and

(7) Turn left immediately (pass through gate to Granite Bay Activity Center).

From Interstate 80

(1) Take Douglas Boulevard exit and head east for 6 miles;

(2) Go past the State Park's entrance station kiosk;

(3) Turn right at the 2nd stop sign; and

(4) Turn left immediately (pass through gate to Granite Bay Activity Center).

- Folsom Community Center, 52 Natoma Street, Folsom, California.

FOR FURTHER INFORMATION CONTACT: Mr. Shawn Oliver, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630; telephone number (916) 989–7256; e-mail *soliver@mp.usbr.gov*.

Dated: November 17, 2005.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E5–6757 Filed 12–1–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–555]

In the Matter of Certain Devices for Determining Organ Positions and Certain Subassemblies Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 28, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SAS PRAXIM of La Tronche, France and Varian Medical Systems, Inc. of Palo Alto, California. A supplement to the complaint was filed on October 19, 2005. On October 25, 2005, the Commission granted complainants' request for a postponement of the Commission's determination whether to institute an investigation in order for complainant to provide further supplementation. An additional supplement was filed on November 9, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for determining organ positions and certain subassemblies thereof by reason of infringement of claims 1, 2, 5, and 10 of U.S. Patent No. 5,447,154. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 23, 2005, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation,

or the sale within the United States after importation of certain devices for determining organ positions and certain subassemblies thereof by reason of infringement of claims 1, 2, 5, or 10 of U.S. Patent No. 5,447,154, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

SAS PRAXIM, 4 Avenue de l'Obiou, Le Grand Sablon, 38700 La Tronche, France.

Varian Medical Systems, Inc., 3100 Hansen Way, Palo Alto, California 94304.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Resonant Medical, Inc., 2050 Bleury Street, Suite 200, Montreal, Quebec, Canada H3A 2J5.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–D, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: November 28, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–6780 Filed 12–1–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 018–2005]

Privacy Act of 1974; Modification of System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice proposes to modify the Departmentwide system of records entitled, ''Department of Justice Regional Data Exchange System (RDEX)'' DOJ–012, previously published in full text in the **Federal Register** on July 11, 2005 (70 FR 39790).

This system is being modified as follows:

(1) The Categories Of Individuals Covered By The System And The Categories Of Records In The System are being modified to reflect that information in RDEX that originated with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI) will no longer be limited to information from the State of Washington field offices of those components. This modification is necessary due to the expansion of the RDEX pilot project to include other regional sharing initiatives;

(2) The Purpose Of the System is being modified to reflect that in addition to consolidating certain law enforcement information from other Department of Justice systems, in some instances RDEX will include information from such other systems that has been structured in order to facilitate sharing initiatives; and

(3) The System Managers and Addresses portion of the notice is being modified to reflect that requests for information about the RDEX system generally should be sent to the FBI rather than the Chief Information Officer, Justice Management Division, as it was subsequently determined that the FBI would serve as the system and security administrator for RDEX.

The RDEX system is part of the Department's Law Enforcement Information Sharing Program (LEISP). The expansion of the RDEX pilot program to include other regional sharing initiatives and the concomitant modifications to the RDEX system notice to reflect such expansion serve to further the LEISP's principal purpose of ensuring that Department of Justice criminal law enforcement information is available for users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security.

The Department is providing a report of this modification to OMB and Congress.

Dated: November 22, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

DOJ–012

SYSTEM NAME:

Department of Justice Regional Data Exchange System (RDEX).

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include individuals who are referred to in potential or actual cases or matters of concern to the Federal Bureau of Prisons (BOP), the United States Marshals Service (USMS), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI). Because the system contains audit logs regarding queries, individuals who use the system to conduct such queries are also covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of unclassified criminal law enforcement records collected and produced by the BOP, the USMS, the ATF, the DEA, and the FBI, including: investigative reports and witness interviews from both open and closed cases; criminal event data (*e.g.*, characteristics of criminal activities and incidents that identify links or patterns); criminal history information (*e.g.*, history of arrests, nature and disposition of criminal charges, sentencing, confinement, and release); and identifying information about criminal offenders (*e.g.*, name, address, date of birth, birthplace, physical description). The system also consists of audit logs that contain information regarding queries made of the system.

* * * * *

PURPOSE OF THE SYSTEM:

This system is maintained for the purpose of ensuring that Department of

Justice criminal law enforcement information is available for users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security. RDEX furthers this purpose by consolidating, and in some instances structuring, certain law enforcement information from other Department of Justice systems in order that it may more readily be available for sharing with other law enforcement entities.

* * * * *

SYSTEM MANAGERS AND ADDRESSES:

[Replace first paragraph with the following:]

For the RDEX system generally: Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

[Other system managers remain the same.]

* * * * *

[FR Doc. E5–6739 Filed 12–1–05; 8:45 am]

BILLING CODE 4410–FB–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–156)]

International Space Station Advisory Committee; Notice of Establishment of a NASA Advisory Committee, Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. Sections 1 et seq.

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The Administrator of the National Aeronautics and Space Administration has determined that the establishment of the International Space Station Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: International Space Station Advisory Committee.

Purpose and Objective: The Committee will advise the NASA Associate Administrator of the Space Operations Mission Directorate on matters related to the safety and operational readiness of the International Space Station. The Committee will draw on the expertise of its members and other sources to provide its advice and recommendations to the Agency. The Committee will hold meetings and make site visits as necessary to accomplish its responsibilities. The Committee will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

Lack of Duplication of Resources: The Committee's functions cannot be performed by the agency, another existing committee, or other means such as a public meeting.

Fairly Balanced Membership: Membership shall be comprised of experts in disciplines that permit the assessment of any aspect of the ISS program. Consultants or subject matter experts may be called in on a temporary basis to assist or augment the Committee when unique or additional expertise is required. The Associate Administrator of the Space Operations Mission Directorate shall ensure a balanced representation in terms of the points of view represented and the functions to be performed.

Duration: Continuing.

Responsible NASA Official: Mr. William Gerstenmaier, Associate Administrator, Space Operations Mission Directorate, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone (202) 358–2015.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E5–6775 Filed 12–1–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting

Agency Holding Hearing: National Science Board.

Date and Time: December 7, 2005, 10 a.m.–1:30 p.m. (ET).

Place: Cannon House Office Building, Room 210, First Street and Independence Avenue, SW., Washington, DC.

Status: This Hearing will be open to the public.

K–16 Science, Technology, Engineering, and Mathematics (STEM) Education in the U.S.

10 a.m. Welcome.
Warren M. Washington, Chairman, National Science Board.
10:05 a.m. Opening Remarks.
Steven Beering, National Science Board.
10:15 a.m. Panelist Commentary.
Congressman Frank Wolf,* Chairman, Subcommittee on Science, State, Justice, and Commerce, Committee on Appropriations.
Congressman Sherwood Boehlert,* Chairman, Committee on Science.
Congressman Vernon J. Ehlers,* Chairman, Subcommittee on Environment, Technology, and Standards, Committee on Science.
Congresswoman Eddie Bernice Johnson,* Committee on Science.
11 a.m. Roundtable Discussion and Questions from the Audience
11:20 a.m. Panelist Commentary.
Mary Vermeer Andringa, President and COO, Vermeer Manufacturing Company.
Alfred Berkeley, Chairman and CEO, Pipeline Trading Systems, LLC.
William Archey, President and CEO, American Electronics Association.
Ronald Bullock, CEO, Bison Gear and Engineering.
12 p.m. Roundtable Discussion and Questions from the Audience.
12:20 p.m. Panelist Commentary.
Cecily Cannan Selby, Biophysicist/Fellow, New York Academy of Sciences.
Jack Collette, Senior Consultant, Delaware Foundation for Science and Mathematics.
Robert Tinker, President, The Concord Consortium.
1 p.m. Roundtable Discussion and Questions from the Audience.
1:20 p.m. Closing Remarks.
Steven Beering, National Science Board.
*Tentative

For More Information Contact: Dr. Michael P. Crosby, Executive Officer and NSB Office Director. (703) 292–7000. *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. E5–6788 Filed 12–1–05; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35997]
[License No. 11–27727–01; EA–05–123, 05–204]

In the Matter of Sabia, Inc., San Diego, CA; Confirmatory Order Modifying License (Effective Immediately)

In calendar year 2004, Sabia, Inc., (Sabia or Licensee) had been the holder of a general license pursuant to 10 CFR 150.20, ''Recognition of Agreement State Licenses'' which allowed Sabia to conduct licensed activities in NRC's jurisdiction using its State of California license. Sabia is also the holder of NRC License No. 11–27727–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The NRC license authorizes Sabia to

possess and use certain licensed material in fixed gauging devices that have been registered either with the NRC or with an Agreement State and have been distributed in accordance with an NRC or Agreement State specific license. The license was most recently amended on June 21, 2005, and is due to expire on June 30, 2012.

On March 16, 2005, the NRC concluded an investigation into Sabia's activities that were conducted over the period from January to July of 2004, at the Farmersburg Mine, Pimento Indiana; the R.A.G. Emerald Mine, Waynesburg, Pennsylvania; and the McElroy Mine, Moundsville, West Virginia. The investigation reviewed activities conducted under the provisions of a general license granted to Sabia pursuant to the provisions of 10 CFR 150.20 as they relate to radiation safety and compliance with the Commission's rules and regulations. Based on the results of the investigation, two apparent violations were identified and have been considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violations considered for escalated enforcement action involved: (1) Sabia's failure to comply with 10 CFR 150.20 when it did not comply with all terms and conditions of its State of California byproduct material license while using licensed material in NRC jurisdiction, and (2) as a result, Sabia effectively transferred licensed material to persons who were not authorized to receive such material under the terms of a specific or general license. In addition, the NRC was concerned that willfulness, in the form of careless disregard, was associated with the first apparent violation. These findings were documented in NRC Inspection Report 150–00004/05–002 (OI Investigation Reports 4–2004–016 and 4–2004–019) dated July 14, 2005.

In response to the July 14, 2005 inspection report, Sabia requested use of the NRC's Alternative Dispute Resolution (ADR) process to resolve differences it had with the NRC's inspection findings. The NRC uses ADR, a process in which a neutral mediator with no decision-making authority, assists the NRC and the party subject to enforcement action in reaching an agreement to resolve any differences regarding the enforcement action. In this case, an ADR session was conducted between the NRC and Sabia in RIV, Arlington, Texas on August 31, 2005. The ADR session was mediated by a professional mediator arranged through Cornell University's Institute of Conflict Resolution and a settlement agreement was reached.

The elements of the settlement agreement are documented in a letter from Mr. Clinton L. Lingren, President, Sabia to the NRC dated August 31, 2005, and consist of the following:

1. Sabia acknowledges that there were violations as described in NRC Inspection Report 150–00004/05–002. Specifically, there was a violation of 10 CFR 150.20 and 10 CFR 30.41(a) and (b)(5). Sabia does not agree that willfulness was involved. The NRC will not draw any conclusion on whether willfulness was involved with these violations.

2. In order to prevent recurrence of these types of violations, Sabia agrees to take the following actions described in section IV.

3. Consistent with the NRC's ADR policies, Sabia agrees to the issuance of a Confirmatory Order confirming this agreement, and understands that the NRC will issue a press release along with the Confirmatory Order.

4. The NRC agrees not to pursue any further enforcement actions related to these specific issues and violations.

Nothing in this agreement prevents the NRC from taking enforcement actions for violations of this Confirmatory Order.

On November 15, 2005, Sabia consented to issuing this Confirmatory Order with the commitments as described in section IV below. Sabia further agreed in its November 15, 2005, letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing on this Confirmatory Order. The NRC has concluded that its concerns can be resolved through effective implementation of Sabia's commitments. Note that Items 1, 3, and 4, above are not included in section IV below. This is because Item 1 reflects Sabia's acknowledgment of the violations and NRC's decision not to draw a conclusion on willfulness. Item 3 relates to agreement of the issuance of the Confirmatory Order and is not needed. And, Item 4 relates to NRC's agreement not to take enforcement action on the apparent violations in exchange for effective implementation of Sabia's additional action.

I find that Sabia's commitments as set forth in section IV are acceptable and necessary, and I conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Sabia's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *It Is Hereby Ordered, Effective Immediately, That License No. 11–27727–01 Is Modified As Follows:*

In order to prevent recurrence of the types of violations identified in NRC Inspection Report 150–00004/05–002, dated July 14, 2005, Sabia shall take the following actions:

1. Training. In addition to the current training program for all employees who work with nuclear sources (to include technicians, technician supervisors, and all radiation safety officer (RSO) staff) SABIA will put in place training that outlines the responsibilities of the RSO and those who regularly provide checks and balances to ensure that RSO duties are carried out in accordance with NRC requirements, by February 28, 2006. This training will outline policy for internal reviews of communications with regulatory agencies and verification that regulations and license conditions are properly followed. The company president will conduct that portion of the training that relates to policy and overall safety considerations. Specific training with regards to the requirements of 10 CFR 30.9 and potential enforcement actions that can occur will be included. Key principles of all this additional training will be incorporated into annual refresher training. A video record of the initial training will be kept available for review by the NRC.

2. Audits. After implementing efforts to respond to concerns expressed in the ADR meeting and before the end of 2006, SABIA will have a comprehensive audit of its radiation safety program performed by an outside auditor. Sabia will submit for NRC review a copy of the scope of the audit at least 30 days prior to its performance. Within a year after the conclusion of that audit, SABIA will perform an internal audit of that program including verification of actions performed in response to any external audit findings. SABIA will notify the NRC when those audits are complete and make the results available for NRC's review.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Sabia of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be

given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and propose at least one admissible contention, addressing the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 22nd day of November 2005.

Michael R. Johnson,

Director, Office of Enforcement.

[FR Doc. E5–6750 Filed 12–1–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 5, 2005:

A closed meeting will be held on Thursday, December 8, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a), (3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, December 8, 2005 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and an

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 29, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23612 Filed 11–30–05; 11:33 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52824; File No. SR–CBOE–2005–69]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Delete Certain Exchange Rules, or Portions Thereof, Which Have Been Determined by the Exchange To Be Obsolete or Unnecessary

November 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On November 8, 2005, the Exchange filed Amendment No. 1 to the proposal.[3] The Exchange filed the proposed rule change, as amended, as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to delete certain rules, or portions thereof, which have been determined by the Exchange to be obsolete or unnecessary. The text of the proposed rule change is available on Exchange's Web site *(http://www.cboe.com)*, at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated November 8, 2005, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] 17 CFR 240.19b–4(f)(6).

rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to delete the rules, or portions thereof, that pertain to the former Joint Venture Participation Agreement (''Agreement'') between CBOE and the Chicago Board of Trade (''CBOT''). The Exchange represents that the Agreement, among other things, provided that CBOE would waive certain dues and fees for CBOT Exercise members who made no trades in CBOE contracts in a given quarter. In addition, the Agreement waived all membership application fees and technology fees for CBOT Exercise members. The Exchange represents that the Agreement terminated on December 29, 1998, and the Exchange has no intention of initiating this program in the future. On December 10, 1998, CBOE issued Regulatory Circular RG98–140 to its members informing them that the Agreement would terminate effective December 29, 1998 and that the Agreement would not be renewed. In addition, the Commission issued Securities Exchange Act Release No. 40973, which pertained to the termination of the Agreement and the initiation of fees that would ultimately be charged to the CBOT Exercise members pursuant to the termination of the Agreement.[5] The proposed CBOE rules that pertain to the obsolete Agreement, or the portions thereof, that are to be deleted are: CBOE Rule 1.1, Rule 6.7, Rule 6.20, Rule 6.70, Rule 9.1, Rule 19.1, and Rule 30.12.

Also, the Exchange proposes to delete the rules, or portions thereof, that pertain to Board Brokers. A Board Broker is an individual member, a nominee of a member organization or a member organization who or which is registered with the Exchange for the purposes of (i) acting as a ''broker's broker'' for specified classes of options, at the post at which such classes of options are traded, by accepting and attempting to execute orders placed with him by other members, and (ii) monitoring the market for such classes of options at the post. The Exchange represents that it has not used Board Brokers for approximately 22 years, and does not intend to use them in the future. The proposed CBOE rules pertaining to Board Brokers, or the portions thereof, that are to be deleted are: CBOE Rule 6.43, Rule 6.46, Rule 6.47, Rule 6.54, Rule 6.70, Rule 7.1, Rule 7.2, Rule 7.3, Rule 7.4, Rule 7.5, Rule 7.7, Rule 7.8, Rule 7.9, Rule 7.10, and Rule 7.11.

In addition to the deletions of the above-referenced ''Joint Venture'' and ''Board Broker'' rules, or portions thereof, the Exchange proposes to delete each of the following rules, or portions thereof:

- CBOE Rule 2.21—This rule allows the Exchange to impose a charge upon Exchange members measured by their respective net commissions. The Exchange represents that Exchange members have not assessed the commissions that such charges are measured by since the early 1970s, and such commissions will not be assessed by Exchange members in the future. For this reason, the Exchange has not imposed and will not impose such charges upon its members, since there is no commission to base it upon, therefore making this rule obsolete and unnecessary.
- CBOE Rule 2.25 and CBOE Rule 2.30—These rules allow the Exchange to assess fees for the delayed submission of trade information. Specifically, these rules allow the Exchange to assess fees to members who failed to submit trade information for at least 80% of all of that member's transactions. Currently, over 98% of all trade information is disseminated within one hour after the time of execution. The Exchange represents that it no longer assesses such fees, since 98% of all trade information is disseminated within one hour after the time of execution, and does not intend to assess them in the future.
- CBOE Rule 14.2, CBOE Rule 14.3, and CBOE Rule 14.5—The rules in Chapter 14 of the CBOE rulebook were created for the purpose of charging and collecting commissions. Specifically, CBOE Rule 14.1 made it mandatory for commissions to be charged and collected upon the execution of all orders, for the accounts of members and non-members, of securities dealt on CBOE. CBOE Rule 14.1 stated that the commissions would be no less than the rates established by CBOE and such commissions shall be ''net and free from any rebate, return, discount or allowance.'' The Exchange represents that CBOE Rule 14.1 was deleted from CBOE's rules on May 15, 1975, since such fixed commissions would no longer be charged and would not be charged in the future.

For this reason, at this time, the Exchange proposes to delete CBOE Rules 14.2, 14.3, and 14.5, since the Exchange believes that there is no need for these rules since they pertained specifically to the commissions discussed in CBOE Rule 14.1 and which are no longer necessary.

Specifically, CBOE Rule 14.2 involves reciprocal arrangements. The Exchange states that reciprocal arrangements were agreements that brokers used with other brokers to permit such brokers to participate in the commissions that were generated from the execution of orders. The Exchange represents that reciprocal arrangements have not been used since the early 1970s. Specifically, CBOE Rule 14.2(a) states that any such arrangement had to be reported to CBOE and subject to CBOE's approval. CBOE Rule 14.2(b) states that no member, in consideration of the receipt of business, shall make any payments, or give up any work or give up any part of any commission to which such member is or will be entitled. Since such arrangements as described in CBOE Rule 14.2(b) were never permitted, the Exchange would not approve such arrangements pursuant to CBOE Rule 14.2(a), if and when an Exchange member reported such an arrangement to the Exchange. Further, since the commissions as discussed in CBOE Rule 14.1 are no longer charged, and have not been charged since the early 1970s, the Exchange believes that there is no need to have a rule pertaining to reciprocal arrangements, since the commissions that the arrangements were based on are no longer charged and will not be charged in the future. Specifically, CBOE Rule 14.2 prohibited those arrangements that were used to circumvent the commissions referred to in CBOE Rule 14.1, and therefore, since CBOE Rule 14.1 was deleted on May 15, 1975, there is no need for CBOE Rule 14.2.

CBOE Rule 14.3 deals with commissions charged on non-member orders. This rule specifically sets forth that the commissions to be charged on non-member orders shall be mutually agreed upon. Again, the Exchange represents that this rule is obsolete, since the commissions that this rule pertains to are no longer charged and have not been charged since the early 1970s. Therefore, the Exchange believes that there is no need for this rule.

CBOE Rule 14.5 deals with intra-member rates for floor brokerage. This rule states that for those orders that are executed when a principal is given up, the commission shall be mutually

[5] Securities Exchange Act Release No. 40973 (January 25, 1999), 64 FR 4915 (February 1, 1999) (SR–CBOE–98–55).

agreed upon. As with CBOE Rule 14.3, the Exchange believes that this rule is obsolete, since the commissions that this rule pertains to have not been charged since the early 1970s and the Exchange does not plan to charge such commissions in the future. For this reason, the Exchange believes that there is no need for this rule.

• CBOE Rule 15.4—This rule pertains to a monthly commission report that the Exchange required certain individual members and member organizations to submit to the Treasurer of the Exchange. Specifically, this rule required certain members to disclose commissions on business done on the Exchange for each month. The Exchange believes that this rule is obsolete, since such a report is no longer necessary given that such commissions are no longer charged and collected.

2. Statutory Basis

By deleting certain Exchange rules, or portions thereof, which have been determined to be obsolete or unnecessary, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] As required under Rule 19b–4(f)(6)(iii),[10] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–69 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9309.

All submissions should refer to File Number SR–CBOE–2005–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–69 and should be submitted on or before December 23, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6751 Filed 12–1–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] The effective date of Amendment No. 1 is November 8, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 8, 2005, the date on which the Exchange submitted Amendment No. 1.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52838; File No. SR–NYSE–2005–66]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 460 (Specialists Participating in Contests)

November 28, 2005.

I. Introduction

On September 29, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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] to amend NYSE Rule 460 (Specialists Participating in Contests). On October 25, 2005, the NYSE amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 3, 2005.[3] The Commission received no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52688 (October 27, 2005), 70 FR 66879.

comments on the proposal. This order grants accelerated approval to the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to add an exemption to NYSE Rule 460, which generally restricts business transactions between a specialist or his affiliates and any company in whose stock the specialist is registered. The exemption, in new NYSE rule 460.25, would apply to business transactions between a specialist or his affiliates and the sponsor of any Exchange Traded Funds (''ETFs'') in which the specialist is registered. For purposes of the proposed rule, ETFs are Investment Company Units (defined in paragraph 703.16 of the Exchange's Listed Company Manual), Trust Issued Receipts, such as HOLDRs (defined in NYSE Rule 1200), and derivative instruments based on one or more securities, currencies or commodities.

Since ETFs are based on derivatives or indices representing multiple securities, or a single commodity or currency, and the specialist registered to that ETF is not a market maker in any of the underlying component securities, commodities or currencies, the Exchange believes that any potential for conflicts which might have an undue influence or impact on the ETF trading price is removed. Furthermore, while the ETF sponsor generally oversees the performance of the trustee of the ETF and the trust's principal service providers, the trustee is responsible for the day-to-day administration of the trust.

The rule would provide that any fee or other compensation paid in connection with the business transaction to a specialist or his affiliates not have any relationship to the trading price or daily trading volume of the ETF. The rule also would provide that a specialist or his affiliates must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF in which the specialist is registered, except those of a routine and generally available nature.

The Exchange requested accelerated approval of the proposed rule change on November 25, 2005, prior to the thirtieth day after the date of publication of the notice in the **Federal Register**.[4]

[4] Telephone conference between Donald Siemer, Director, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 21, 2005.

III. Discussion

After careful consideration, 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.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[7] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the **Federal Register**. The Commission notes that the proposal was noticed for the full 21-day comment period, and no comments were received. Accelerated approval will also accommodate the Exchange's trading of certain derivative products.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2005–66), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6752 Filed 12–1–05; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52842; File No. SR–NYSE–2005–50]

Self-Regulatory Organizations; New York Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Proposed Amendments to Rules 282 (Mandatory Buy-In), 284 (Procedure for Closing Defaulted Contract), 289 (Must Receive Delivery), and 290 (Defaulting Party May Deliver After Notice of Intention to Close)

November 28, 2005.

I. Introduction

On July 15, 2005, the New York Stock Exchange Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NYSE–2005–50 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on September 28, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The NYSE is amending NYSE Rules 282, 284, 289, and 290 to permit members and member organizations (collectively referred to as ''member'') to initiate buy-ins, reduce the waiting period to initiate a buy-in from thirty days to three days, and to otherwise provide more standardized and consistent industry buy-in rules and procedures.

Current Requirements

NYSE Rule 282 sets forth the ''mandatory buy-in'' process by which a member acting as a buyer (''initiating member'') is required to close-out a contract that has not been completed by the member acting as the seller (''defaulting member'') for a period of thirty calendar days. A mandatory buy-in requires that a buy-in notice be delivered in triplicate by the initiating member (buyer) to the defaulting member (seller). The defaulting member receiving the buy-in notice must indicate on the buy-in notice its position with respect to the resolution of the failed trade (*e.g.*, doesn't know the trade, knows the trade but cannot deliver, will deliver) and return the buy-in notice to the initiating member. If the buy-in notice is not returned when due

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 52475 (September 20, 2005), 70 FR 56757.

or is returned with the indication that the contract is known but that delivery cannot be made, a ''buy-in order'' in duplicate is sent to the defaulting member for execution.

NYSE Rule 284 sets forth a procedure by which an initiating member may close-out a contract that has not been completed by the defaulting member but that is not required to be closed-out. The initiating member must deliver a buy-in notice to the defaulting member prior to forty-five minutes after delivery time. Then the initiating member (buyer) must deliver a buy-in order to the defaulting member between 2:15 p.m. and 2:30 p.m. for execution after 2:35 p.m.

NYSE Rule 289 requires an initiating member to accept physical delivery of some or all of the securities that are the subject of a buy-in, thereby halting the mandatory buy-in execution for those securities if the defaulting member tenders the securities prior to the mandatory buy-in deadlines. NYSE Rule 290 permits a defaulting member to deliver securities subject to a notice of buy-in until 2:30 p.m. on the day of the execution of the buy-in.

The NYSE buy-in rules apply to transactions that are not subject to the rules of a qualified clearing agency such as The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC''). In the event that a buy-in is sent to the NYSE floor for execution, then NYSE buy-in rules apply.

However, under the current NYSE rules, there are inherent conflicts of interest by permitting the defaulting member to execute the buy-in. For example, the defaulting member could manipulate the extent to which it has market exposure by timing its purchase of the necessary securities to benefit itself. The initiating member may receive negative customer reaction if the customer learns that its trade has not settled and their securities are unavailable because a buy-in has not been executed by the defaulting member or has not been executed in a timely manner.

Other self-regulatory organizations (''SROs'') have recognized this potential conflict and have adopted buy-in rules that assign responsibility to the initiating member to execute the buy-in. By allowing initiating members to execute their own buy-ins, any potential conflict of interest involving the defaulting member is avoided and the process is expedited.

In the course of reviewing the operation of its buy-in rules, the NYSE and other regulators met with the Securities Industry Association's Securities Operations Division Buy-In Committee (''Committee''), which is comprised of regulators, broker-dealers, and industry groups, to identify and standardize various buy-in rules and procedures regarding the close-out process related to street-side contracts. The Committee requested that the NYSE amend the buy-in rules to eliminate the ''Notice'' procedures described above and to allow the initiating member (buyer) to execute buy-ins to close out a contract.

Amendments [3]

The NYSE is effecting five amendments to its buy-in rules. First, the NYSE is amending Rule 282 to allow the initiating member to execute a mandatory buy-in and to reduce the waiting period to initiate a mandatory buy-in from thirty days to three days after delivery on the contract was due. The NYSE believes once the responsibility is shifted to the initiating member, the buy-in process will work more efficiently.

Second, the NYSE is eliminating the requirement for duplicate and triplicate paper notices and is permitting electronic notices, including notices from a computerized network facility or from the electronic functionality of a qualified clearing agency, such as DTC and NSCC. The NYSE is also amending existing time deadlines for delivering notices, securities, and executions and is using those used by other self-regulatory organizations (*i.e.*, DTC and NSCC).

Third, the NYSE is adding a section to Rule 282's Supplementary Material to ensure that members comply with the closeout requirements of Regulation SHO.[4] Members are obligated to comply with the marking, locate, and delivery requirements of Regulation SHO for short sales of equity securities. As a result, members should have policies and procedures in place to comply with these rules, including closeout procedures.

Fourth, the NYSE is rescinding Rule 284 and incorporating those ''buy-in'' procedures into Rule 282. The NYSE is also amending Rules 289 and 290 to clarify the requirements and timeframes upon which a defaulting member may deliver against a ''buy-in'' notice. Fifth, the NYSE is making certain technical amendments to Rules 282, 289, and 290 to better coordinate the rules with industry practice.

III. Discussion

Section 6(b)(5) of the Act requires that rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[5] The Commission finds that the NYSE's proposed amendments to its buy-in rules should aid members in the clearance and settlement of their transactions by improving and making consistent with other self-regulatory organizations' rules its buy-in procedures.

IV. Conclusion

On the basis of the foregoing, 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–2005–50) be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6753 Filed 12–1–05; 8:45 am]

BILLING CODE 8010–01–P

[3] The specific changes to NYSE rules are attached as an exhibit to its rule filing which can be found on the Commission's Web site and on NYSE's Web site.

[4] Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7–23–03] (adoption of Regulation SHO).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5216]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Thursday, December 15, 2005, from approximately 9 a.m. to 3:30 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. At this meeting the Committee will conduct its ongoing

review function with respect to the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia. This meeting is for the Committee to satisfy its ongoing review responsibility of the effectiveness of agreements pursuant to the Act and will focus its attention on Article II of the MOU. This is not a meeting to consider extension of the MOU. Such a meeting will be scheduled at the appropriate time in 2006 at which time a public session will be held.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The U.S.-Bolivia MOU, the designated list of restricted categories, the text of the Act, and related information may be found at *http://exchanges.state.gov/culprop*.

The meeting on December 15 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: November 21, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–6779 Filed 12–1–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0589)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing PHMSA collection of information for response plans for onshore oil pipelines. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. With this notice, PHMSA invites the public to submit comments over the next 60 days on ways to minimize the burden associated with collection of information related to response plans for onshore oil pipelines.

DATES: Comments must be submitted on or before January 31, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–98–4957 and may be submitted in the following ways:

- DOT Web site: *http://dms.dot.gov*. To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- E-Gov Web site: *http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA–98–4957, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*, and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number. **Note:** All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: William Fuentevilla at (202) 366–6199, or by e-mail at *William.Fuentevilla@dot.gov*.

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

This information collection request pertains to 49 CFR part 194, Response Plans for Onshore Oil Pipelines. This rule requires an operator of an onshore oil pipeline facility to prepare and submit an oil spill response plan to PHMSA for review and approval when, because of its location, the facility could reasonably be expected to cause substantial harm to the environment if it were to discharge oil into navigable waters or adjoining shorelines. The rule established the planning requirements for oil spill response plans to reduce the environmental impact of oil discharged from onshore oil pipelines, as mandated by the Oil Pollution Act of 1990 (OPA 90). The rule provides greater specificity and guidance to facilities than is provided in OPA 90's statutory language in order to enhance private sector planning capabilities to minimize the impacts of oil spills from pipelines.

The information collection required by the rule is the submission of response plans to PHMSA by affected pipeline operators. Additionally, operators must review and resubmit their response plans at least every 5 years, or in response to new or different operating conditions. Operators must submit any change or update to response plans within 30 days of making such a change. This information collection supports the DOT strategic goal of environmental stewardship by reducing pollution and other adverse environmental effects of transportation and transportation facilities.

As used in this notice, ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Response Plans for Onshore Oil Pipelines.

Respondents: 367 hazardous liquid pipeline facilities.

Estimated Total Annual Burden on Respondents: 50,186 hours.

Issued in Washington DC on November 28, 2005.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. 05–23547 Filed 12–01–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34754]

Alabama Southern Railroad, Inc.—Lease and Operation Exemption—The Kansas City Southern Railway Company

Alabama Southern Railroad, Inc. (ABS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from The Kansas City Southern Railway Company (KCS) and operate approximately 85.6 miles of rail line consisting of lines on the (1) Tuscaloosa Subdivision between milepost 17.0 near Columbus, MS, and milepost 78.9 near Tuscaloosa, AL; (2) Warrior Branch between milepost 0.0 at Tuscaloosa, AL, and milepost 9.3 near Fox, AL; and (3) Brookwood Branch between milepost 443.5 at Brookwood Jct., AL, and milepost 429.1 at Brookwood, AL. ABS is also being assigned KSC's overhead trackage rights over a 44.4-mile line of railroad owned by CSX Transportation, Inc., extending between milepost 429.2 at Brookwood, AL, and milepost 384.8 at Birmingham, AL.

ABS certifies that its projected annual revenues as a result of this transaction will not result in it becoming a Class II or Class I rail carrier. Because ABS's projected annual revenues will exceed $5 million, ABS has certified to the Board on September 7, 2005, that it sent the required notice of the transaction on September 2, 2005, to the national offices of all labor unions representing employees on the line and that it posted a copy of the notice at the workplace of the employees on the affected lines on September 6, 2005. *See* 49 CFR 1150.32(e).

The transaction was expected to be consummated on or shortly after November 20, 2005.

This transaction is related to STB Finance Docket No. 34755, *Watco Companies, Inc.—Continuance in Control Exemption—Alabama Southern Railroad, Inc.,* wherein Watco Companies, Inc. has concurrently filed a verified notice of exemption to continue in control of ABS upon its becoming a rail carrier.

If the 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. 34754, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–23551 Filed 12–1–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34755]

Watco Companies, Inc.—Continuance in Control Exemption—Alabama Southern Railroad, Inc.

Watco Companies, Inc. (Watco) has filed a verified notice of exemption to continue in control of Alabama Southern Railroad, Inc. (ABS), upon ABS's becoming a Class III rail carrier.[1]

The transaction was scheduled to be consummated on or shortly after November 20, 2005.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34754, *Alabama Southern Railroad, Inc.—Lease and Operation Exemption—The Kansas City Southern Railway Company,* wherein ABS seeks to acquire by lease from The Kansas City Southern Railway Company (KSC) and operate approximately 85.6 miles of rail line in Mississippi and Alabama. As part of that transaction, ABS is also being assigned KSC's overhead trackage rights over a 44.4-mile line of railroad owned by CSX Transportation, Inc., extending between milepost 429.2 at Brookwood, AL, and milepost 384.8 at Birmingham, AL.

Watco, a noncarrier, is a Kansas corporation that currently controls, through stock ownership and management, 15 Class III rail carriers operating in 14 States.

Applicant states that: (1) The lines being leased and operated by ABS do not connect with the rail lines in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the leased lines with any other rail lines in Watco's corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

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. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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. 34755, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–23538 Filed 12–1–05; 8:45 am]

BILLING CODE 4915–01–P

[1] Watco owns 100% of the issued and outstanding stock of ABS.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 2005.

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 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 3, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0499.

Type of Review: Extension.

Title: Simplified Employee Pension-Individual Retirement Account Contribution Agreement.

Form: IRS form 5305–SEP.

Description: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with the IRS but to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP. The data issued to verify the deductions.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 495,000 hours.

OMB Number: 1545–1231.

Type of Review: Extension.

Title: IA 38–39 Final Regulations (T.D. 8382) Penalty on Income Tax Return Preparers who understate Taxpayer's Liability on a Federal Income Tax return or a claim for refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Business or other for-profit, Individual or households.

Estimated Total Burden Hours: 50,000 hours.

OMB Number: 1545–1514.

Type of Review: Extension.

Title: REG–209040–88(NPRM) Qualified Electing Fund Elections.

Description: These regulations permit certain shareholders to make a special section 1295 election with respect to certain preferred shares of a PFIC. Taxpayers must indicate the election on a Form 8621 and attach a statement containing certain information and representations. Form 8621 must be filed annually. The shareholders also must obtain, and retain a copy of a statement from the corporation as to its status as a PFIC.

Respondents: Business or other for-profit, Individual or households.

Estimated Total Burden Hours: 600 hours.

OMB Number: 1545–1660.

Type of Review: Extension.

Title: Notice 99–43 Nonrecognition Exchanges under Section 898.

Description: Notice 99–43 announces a modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The new rule will be included in regulation finalizing the temporary regulations.

Respondents: Business or other for-profit, Individual or households.

Estimated Total Burden Hours: 200 hours.

OMB Number: 1545–1687.

Type of Review: Extension.

Title: REG–110311–98 (Final) Corporate Tax Shelter Registration.

Description: The regulations finalize the rules relating to the filing of certain taxpayers of a disclosure statement with their Federal Tax returns under IRC section 6111(a), the rules relating the registration of confidential corporate tax shelters under 6011(d), and the rules relating to the list maintenance requirements under section 6112.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1953.

Type of Review: Extension.

Title: Notice 2005–XX Guidance Regarding Appraisal and Report Requirements for Noncash Charitable Contributions.

Form: IRS form 8283.

Description: The notice provides guidance under new section 170(f) (11) regarding substantiation and reporting requirements for charitable contributions.

Respondents: Business or other for-profit, Individual or households and Not-for-profit institutions.

Estimated Total Burden Hours: 15,629 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E5–6746 Filed 12–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Announcement 2005–80

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 2005–80, Global Settlement Initiative.

DATES: Written comments should be received on or before January 31, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Global Settlement Initiative.

OMB Number: 1545–1967.

Announcement Number: Announcement 2005–80.

Abstract: This announcement provides a settlement initiative under which taxpayers and the Service may resolve certain abusive tax transactions.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Average Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 23, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–6736 Filed 12–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Copayment for Medication

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice that the medication copayment rate will be increased from $7.00 to $8.00. The total amount of copayments in a calendar year for a veteran enrolled in one of the priority groups 2 through 6 shall not exceed the new cap of $960.00. These increases are based on calculations based on the Prescription Drug component of the Medical Consumer Price Index and as provided in Title 38, Code of Federal Regulations, part 17, § 17.110.

DATES: These rates are effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy (163), Veterans Health Administration, Department of Veterans Affairs (VA), 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0406. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is required by law to charge certain veterans a copayment for each 30-day or less supply of medication provided on an outpatient basis (other than medication administered during treatment) for treatment of a non-service connected condition. Public Law 106–117, The Veterans' Millennium Health Care and Benefits Act, gives the Secretary of Veterans Affairs authority to increase the medication copayment amount and to establish a calendar year cap on the amount of medication copayments charged to veterans enrolled in priority groups 2 through 6. When veterans reach the calendar year cap, they will continue to receive medications without additional copayments for that calendar year.

Formula for Calculating the Medication Copayment Amount

Each calendar year beginning after December 31, 2002, the Prescription Drug component of the Medical Consumer Price Index of the previous September 30 is divided by the index as of September 30, 2001. The ratio is then multiplied by the original copayment amount of $7.00. The copayment amount of the new calendar year is then rounded down to the whole dollar amount. Until September 30, 2005, there have been no changes in this ratio which resulted in an increase of VA's medication copayment rates.

Computation of Calendar Year 2006 Medication Copayment Amount

Prescription Drug Medical Consumer Price Index as of September 30, 2005 = 351.8

Prescription Drug Medical Consumer Price Index as of September 30, 2001 = 304.8

Index = 351.8 divided by 304.8 = 1.1542 (INDEX) × $7 = $8.08

Copayment amount = $8.00

Dated: November 23, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E5–6737 Filed 12–1–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 231

Friday, December 2, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20969; Directorate Identifier 2005–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; Model BAe.125 Series 800A (C–29A and U–125), 800B, 1000A, and 1000B Airplanes; and Model Hawker 800 (including variant U–125A), and 1000 Airplanes

Correction

In proposed rule document 05–7673 beginning on page 20080 in the issue of Monday, April 18, 2005, make the following corrections:

1. On page 20082, in the table, the heading in the first column ''Action hour'' should read ''Action''.

2. On the same page, in the same table, the heading in the third column ''Average labor rate per'' should read ''Average labor rate per hour''.

3. On the same page, in the same table, the heading in the fifth column ''Cost per hour airplane'' should read ''Cost per airplane''.

[FR Doc. C5–7673 Filed 12–1–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

December 2, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0051; FRL–8003–6]

RIN 2060–AJ78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On June 14, 1999, under the authority of section 112 of the Clean Air Act (CAA), the EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in the portland cement manufacturing industry. On December 15, 2000, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded parts of the NESHAP for the portland cement manufacturing industry to EPA to consider, among other things, setting maximum achievable control technology (MACT) floor standards for hydrogen chloride (HCl), mercury, and total hydrocarbons (THC), and beyond-the-floor standards for metal hazardous air pollutants (HAP). This action provides EPA's proposed rule amendments in response to those aspects of the court's remand.

DATES: *Comments.* Written comments must be received on or before January 17, 2006.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 12, 2005, a public hearing will be held within approximately 15 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0051, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0051, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0051, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a duplicate copy, if possible.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504–05), Research Triangle Park, NC 27711; telephone number (919) 541–5605; facsimile number (919) 541–5600; e-mail address *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially affected by this action are those that manufacture portland cement. Regulated categories and entities include:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS [1]	Examples of regulated entities
Industry	32731	Owners or operators of portland cement manufacturing plants.
State	32731	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	Owners or operators of portland cement manufacturing plants.
Federal agencies	None	None.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may potentially be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID Number OAR–2002–0051. The official public docket is the collection of materials that is available for public viewing both electronically and in printed form. This docket is available electronically through EPA Dockets at *http://www.epa.gov/edocket*. You may access the docket electronically to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

The docket is also available in printed form at EPA, 1301 Constitution Avenue, NW., Room B–102, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744. The telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statue. Information claimed as CBI and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's public docket. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material, but not the material itself, in the version of the comments that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the printed public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket material through the docket facility identified in this document.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Hardcopy public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. *Tips for preparing your comments.* You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. The EPA is not required to consider these late comments.

Our preferred method for receiving comments is electronically through EPA Dockets at *http://www.epa.gov/edocket*. The system is an anonymous access system, which means we will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

In contrast to EPA's electronic public docket, our e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, our e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by our e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

If you submit an electronic comment, we recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Submitting comments containing CBI. Do not submit information that you consider to be CBI electronically through EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Office (C404–02), Attention: Keith Barnett, EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0051. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is 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 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 docket.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/*. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Coatings and Consumer Products Group (C539–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, e-mail address: *eck.janet@epa.gov.*, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Eck 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 emission standards.

Outline. The information presented in this preamble is organized as follows:

I. Background

Section 112(d) of the CAA requires EPA to set emissions standards for major stationary sources based on performance of the MACT. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources or the best performing five sources for source categories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). This level is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar

source (CAA section 112(d)(3)). The EPA also must consider more stringent ''beyond-the-floor'' control options. When considering beyond-the-floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and nonair environmental impacts when doing so.

On June 14, 1999 (64 FR 31898), in accordance with these provisions, EPA published the final rule entitled ''National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry'' (40 CFR part 63, subpart LLL).[1]

The legacy public docket for the final rule is Docket No. A–92–53. The final rule provides protection to the public by requiring portland cement manufacturing plants to meet emission standards reflecting the performance of the MACT. Specifically, the final rule established MACT-based emission limitations for particulate matter (as a surrogate for non-volatile HAP metals), dioxins/furans, and for greenfield[2] new sources, THC (as a surrogate for organic HAP). We considered, but did not establish limits for, THC for existing sources and HCl or mercury for new or existing sources. In response to the mandate of the District of Columbia Circuit arising from litigation summarized below in this preamble, we are proposing emission limitations reflecting MACT for these pollutants in today's action.

We have previously amended the Portland Cement NESHAP. Consistent with the terms of a settlement agreement between the *American Portland Cement Alliance* v. *EPA*, EPA adopted final amendments and clarifications to the rule on April 5, 2002 (76 FR 16614), July 5, 2002 (67 FR 44766), and December 6, 2002 (67 FR 72580). These amendments generally relate to applicability, performance testing, and monitoring. In today's action, we are also proposing to further amend the rule to re-insert two paragraphs relating to the applicability of the portland cement new source performance standards that were deleted in error in a previous amendment.

[1] Cement kilns which burn hazardous waste are in a separate class of source, since their emissions differ from portland cement kilns as a result of the hazardous waste inputs. Rules for hazardous waste-burning cement kilns are found at subpart EEE of part 63.

[2] A new greenfield kiln is a kiln constructed prior to March 24, 1998 at a site where there are no existing kilns.

II. Summary of the National Lime Association v. EPA Litigation

Following promulgation of the NESHAP for portland cement manufacturing, the National Lime Association and the Sierra Club filed petitions for review of the standards in the DC Circuit. The American Portland Cement Alliance, although not a party to the litigation, filed a brief with the court as *amicus curiae.* The court denied essentially all of the petition of the National Lime Association, but granted part of the Sierra Club petition.

In *National Lime Association* v. *EPA*, 233 F. 3d 625 (DC Cir. 2000), the court upheld EPA's determination of MACT floors for particulate matter (PM) (as a surrogate for non-volatile HAP metals) and for dioxin/furan. However, the court rejected EPA's determination that it need not determine MACT floors for the remaining HAP emitted by these sources, namely, mercury, other organic HAP (for which THC are a surrogate), and HC1 (233 F. 3d at 633). The court specifically rejected the argument that EPA was excused from establishing floor levels because no ''technology-based pollution control devices'' exist to control the HAP in question (*Id.* at 634). The court noted that EPA is also specifically obligated to consider other pollution-reducing measures including process changes, substitutions of materials inputs, or other modifications (*Id.*). The court remanded the rule to EPA to set MACT floor emission standards for HC1, mercury, and THC.

The Sierra Club also challenged EPA's decision not to set beyond-the-floor emission limits for mercury, THC, and non-volatile HAP metals (for which PM is a surrogate). The court only addressed the absence of beyond-the-floor emission limits for non-volatile HAP metals since EPA was already being required to reconsider MACT floor emission standards for mercury, THC, and HC1, and thus, by necessity, also must consider whether to adopt beyond-the-floor standards for these HAP. The Sierra Club argued, and the court agreed, that in considering beyond-the-floor standards for non-volatile HAP metals, EPA considered cost and energy requirements but did not consider nonair quality health and environmental impacts as required by the CAA (*Id.* at 634–35). The court also found EPA's analysis of beyond-the-floor standards deficient in its assertion that there were no data to support fuel switching (switching to natural gas) as a viable option of reducing emissions of non-volatile HAP metals (*Id.* at 635).

III. EPA's Proposed Response to the Remand

A. Determination of MACT for Mercury Emissions

During development of the original NESHAP for portland cement manufacturing, we conducted MACT floor and beyond-the-floor analyses for kiln and in-line kiln/raw mill mercury emissions (63 FR 14182, March 24, 1998 and 64 FR 31898, June 14, 1999). Although considered a metal HAP, mercury's volatile nature precludes its control through application of typical PM controls such as fabric filters (FF) or electrostatic precipitators (ESP). At the time of the original rulemaking, we considered establishing an emission limit based on the use of activated carbon injection because a form of this control technology was demonstrated on medical waste incinerators and municipal waste combustors and was being used at one cement plant to reduce opacity from two non-hazardous waste (NHW) kilns. However, the placement of the carbon injection system ahead of the kiln PM control device (the configuration in use at these kilns) and the practice of recycling the cement kiln dust (CKD) collected by the PM control device back to the kiln, meant that the mercury was being revaporized and ultimately emitted to the atmosphere. Thus, the carbon injection systems alone did not control mercury emissions, and we concluded that carbon injection in this configuration could not be used as a basis for establishing a mercury emissions MACT floor for new or existing kilns (63 FR 14202, March 24, 1999). Our conclusion that the single instance of an activated carbon injection system used at a portland cement plant, and the way in which it was used, could not provide the basis for a MACT floor was not contested by the petitioners.

We also conducted a beyond-the-floor analysis of using activated carbon injection with an additional PM control device to reduce mercury emissions. Costs for the system would include the cost of the carbon injection system and an additional FF to collect the carbon separately from the CKD. Based on the low levels of mercury emissions from individual portland cement kilns, as well as the high cost per ton of mercury removed by the carbon injection/FF system, we determined that this beyond-the-floor option was not justified (63 FR 14202, March 24, 1998). The petitioners also did not take issue with this conclusion.

We did receive comments on the proposed NESHAP for portland cement manufacturing suggesting that fuel and/

or feed material switching or cleaning be considered as a means for reducing mercury emissions. In our response to these comments, we explained that feed and/or fossil-fuel switching or cleaning would be considered beyond-the-floor options. We also stated that we lacked data, and none were provided by the commenters, showing that such an option would consistently decrease mercury emissions.

As directed in the court remand, we have reconsidered the issue of MACT floor standards for mercury. We still find that, for existing and new kilns, the MACT floor for mercury is no additional emissions reductions.

We considered simply determining a floor based on the median of the 12 percent of kilns demonstrating the lowest mercury emissions during a performance test. However, an emissions limit established by this method would reflect emission levels resulting from fuels/raw materials fortuitously available at the time of the performance test. These levels could not be replicated by the source conducting the test and could not be duplicated by other sources in the source category, unless they had access to the same fuels and raw materials available at the time of the emissions test (which of course, would never occur). Therefore, we could not demonstrate that any emission limit developed by this method would be achievable on a continuous basis without limiting sources to the same fuels and raw materials available during the performance test.

We then examined the feasibility of using limits on the mercury content of the fuel and feed to the kiln. Mercury air emissions from portland cement manufacturing kilns originate from the feed materials (e.g., limestone, clay, shale, and sand, among others) and fossil fuels (e.g., coal, oil). In general, the amount of mercury emitted by a portland cement manufacturing kiln is proportional to the amount of mercury in the fuel and feed materials due to the volatile nature of mercury at the temperatures encountered in a cement kiln.

Based on available data, the only feed material that contributes to mercury emissions is limestone, which is the main ingredient in portland cement production. The mercury content of limestone has been reported by the United States Geological Survey to range from 0.01 to 0.1 parts per million (ppm) and by the United States Bureau of Mines to range from 0.02 to 2.3 ppm. We considered setting an upper bound based on these data. However, we cannot say that these ranges actually cover the entire range of mercury a source could encounter over time. Therefore, we could not demonstrate that during a performance test a source could meet an emission limit set using these data. In other terms, we know of no way to quantify the variability of a cement kiln's mercury emissions because of the constantly varying concentrations of mercury in raw material inputs. See *Mossville Environmental Action Now* v. *EPA*, 370 F. 3d 1232, 1241–42 (DC Cir. 2004) (EPA must account for sources' variability in establishing MACT floors).

We also are not sure that a consistent source of low-mercury raw materials exists. We have no information to suggest the widespread availability of low-mercury limestone deposits. As with other trace materials in mineral deposits, mercury concentration varies widely between deposits as well as within deposits.

Due to this variability, and the lack of data showing the general availability of low-mercury limestone, it is infeasible to set an emission limit (floor or otherwise) based on switching to low-mercury feed materials, or to establish some type of work practice mandating use of raw material with some specified properties relating to mercury. There are no data showing that a nationwide supply of low-mercury feed materials exists, and even if it did, the cost of shipping feed materials would preclude the use of this technique. Though costs may not be considered in determining a MACT floor, portland cement plants are typically located at or near a limestone quarry because the economics of the portland cement industry require minimal transportation costs. If we were to now require sources to ship raw low mercury limestone over potentially long distances to reduce mercury emissions, it would change the economics of the plant so significantly that the plant would not be the same class or type of source compared to facilities that happened to have low-mercury limestone located nearby (or, at least, had happened on a vein of low mercury limestone at the time of its performance test). Because limestone's composition varies with location, limestone must be processed locally to be profitable, portland cement plants must formulate the mixture of limestone with other materials to attain the desired composition and performance characteristics of their product, and access to limestone is exclusive to each portland cement plant (i.e., no plant typically can gain access to another plant's limestone). This exclusivity would preclude plants from mining from a common, low-mercury limestone quarry. In addition, we expect that even an individual cement kiln's proprietary feed materials would experience significant mercury variability (i.e., within-quarry natural variability), so as mentioned previously, even the same kiln could not be expected to replicate its own mercury emissions results.

We also evaluated the possibility of setting a mercury standard for greenfield new sources based on selection and blending of low-mercury raw materials, similar to the method we used to establish a greenfield limit on THC emissions based on the selection and blending of low-organic containing feed materials (63 FR 14202, March 24, 1998). However, the situation for mercury is different from the situation for THC. In the case of THC, some facilities had already used the selection of low-organic feed materials as a control technique, indicating that this was a feasible technique and that access to suitable low-organic materials exists for greenfield sources. This is not the case for using the selection of a low-mercury feed material. Feed selection to control mercury has not been used in the portland cement industry, and we have found no data (nor has anyone supplied such data) to show that suitable low-mercury feed materials exist for greenfield sites (or for any other type of site). Metal concentrations in limestone (all metals, not just mercury) vary widely both within-quarry and quarry-to-quarry. Given this significant variation in concentration of metals in limestone for a given area, we believe it is implausible to assume the existence of any consistently low-mercury quarry sites.

A secondary source of mercury emitted by portland cement kilns is coal, which portland cement plants burn as their primary fuel, with about 90 percent of the total United States kiln capacity using coal, coke, or a combination of coal and coke as the primary fuel. The remainder use natural gas, oil, or some type of nonhazardous waste (such as tire derived fuel) as the primary fuel. The mercury content of coal ranges from 0.0 to 1.3 micrograms per gram (μg/g) with an average of approximately 0.09 μg/g. Using the mercury content of coal, coal requirements per ton of feed, heat input requirements, and the ratio of feed to clinker, we estimated the amount of mercury entering model kilns from coal and compared it with the total mercury input to kilns from feed materials. Based on average mercury concentrations of feed materials and coal, the largest contribution of mercury to kilns is from feed materials, which account for between 55 percent and 70 percent of

the mercury. Contributions of mercury from coal account for between 30 percent (model precalciner kiln) and 45 percent (model wet kiln) of the mercury input to kilns.

We further examined the existence and availability of low-mercury coal. In 1999, approximately 91 percent of the coal burned by the electric utility industry was bituminous and subbituminous coal types. Although bituminous and subbituminous coals are now believed to contain less mercury than lignite on a heating value basis, the variability in mercury across coal seams and within coal seams is too high to establish one coal type or selected deposit(s) as a designated low-mercury coal. Furthermore, mercury is not the only trace metal or potential HAP present in coal. When levels of mercury in coal are relatively low, concentrations of other HAP metals and other potential pollutants (such as chlorine, fluorine, and sulfur compounds) may be elevated. The availability of a low-mercury coal to the portland cement industry is even more questionable given the pre-existing supply and transportation relationship with electric utilities. For these reasons, EPA does not consider the use of a low-mercury coal by the portland cement industry a feasible practice, or that any standard based on such a practice would be achievable over time due to constant, uncontrollable variability.

We also considered coal cleaning to reduce the mercury content of coal. However, we have determined that typical coal cleaning is effective for reducing mercury concentrations only in specific coals and, at this time, cannot be considered a mercury control technique for all coals. Advanced coal cleaning techniques are also being investigated for improved mercury removal potential. Like conventional cleaning techniques, the advanced cleaning techniques cannot be considered a mercury control technique for all coals at this time. (Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress, Volume 1, February 1998, pp. 13–36 and 13–37).

We also investigated reducing fuel mercury content by requiring facilities to switch to natural gas. Natural gas can contain trace amounts of mercury when fired, but the level is so low that mercury emissions due to natural gas combustion are essentially zero. Assuming complete conversion to natural gas, we estimated the quantity of natural gas that would be required to fuel the portland cement manufacturing industry. Annual clinker production for each of the four kiln types and average British thermal unit (Btu) requirements to produce a ton of clinker for each of the kiln types were used to project annual Btu's needed if the portland cement industry switched completely to natural gas. Using an average heating value for natural gas of 1,000 Btu/cubic feet (cu. ft.), the annual clinker production by kiln type, and the average Btu requirements to produce a ton of clinker for each kiln type, we estimated the total nationwide natural gas requirement of the portland cement industry. Assuming a complete conversion to natural gas (as would be necessary if EPA were to adopt a standard reflecting mercury emission levels based on the use of natural gas), the portland cement industry would consume approximately 370 billion cu. ft. of natural gas annually or 1.6 percent of the total United States natural gas consumption (22.8 trillion cu. ft. in the year 2000) and 3.9 percent of total industrial natural gas consumption (9.6 trillion cu. ft.).

Although United States natural gas reserves would likely be adequate most of the time to handle a conversion by the portland cement manufacturing industry to 100 percent natural gas under normal conditions, supply is constrained by the number and production rate of United States wells, which is the source of most of the United States consumption of natural gas. Another obstacle to completely replacing coal with natural gas is the inadequacy of the existing natural gas infrastructure, including storage facilities, the pipeline distribution system, and compression facilities. Natural gas pipelines are relatively scarce in many United States areas compared to other utilities and are not available in all areas in which portland cement manufacturing plants are located. Even where pipelines provide access to natural gas, supplies of natural gas may not be adequate at all times. For example, it is common practice for industrial users to have interruptible contracts for natural gas. An interruptible contract means that the industrial users get the lowest priority for available gas during periods of peak demand, such as the winter months.

For these reasons, reducing fuel mercury content by requiring kilns to switch to natural gas is not feasible on a national basis. We are unable to identify any other potential low-mercury fuel that could serve as the basis of a MACT floor for mercury.

We also considered setting a floor based on a worst case scenario of mercury in the fuel and feed material combined. However, even a worst case estimate based on the available data would not ensure that a source could consistently meet the standard because there may be situations where a source has an excursion resulting from the inherent variability of the feed/fuel mercury content. We could provide an exception to the standard that would allow the source to exceed the limit by showing its raw materials or fuel contained more mercury than previously thought. However, the result of this approach would be that we would be setting a worse-case standard that is simply a bureaucratic exercise imposing costs (such as costs for permitting, monitoring, and recordkeeping) with no emissions reductions.

We are aware that in specific cases, a source has been able to reduce emissions of mercury by making changes to some of their raw materials. Facilities that are already purchasing materials used as additives or a specific type of coal can make changes that reduce the total mercury input to the kiln. However, as previously discussed, these control techniques are site specific, and we do not believe they can be used as the basis of a national rule. We are also aware that some cement kilns purchase fly ash from utility boilers as an additive feedstock. There is concern that as a result of controlling mercury in utility boilers, the purchased fly ash may now have a higher mercury content than is the current norm. The result would be that mercury emissions reductions achieved by controlling utility boilers would be offset by the release of this previously controlled mercury in a cement kiln when the fly ash is used as an additive. At this time, we are uncertain if the use of fly ash from utility boilers that are controlling their mercury emissions will be significant. One possible solution would be to ban the use of fly ash from a utility boiler that is controlling mercury as an additive to cement kiln feed. We are specifically soliciting comment on a potential ban, or any other methods to address this issue.

Thus, EPA has systematically evaluated all possible means of developing a quantified floor standard for mercury emissions from these sources, both emission control technology and front end feed and fuel control. (See *National Lime*, 233 F. 3d at 634 (finding that EPA had erred in examining only technological (i.e., back-end) controls in considering a level for a mercury floor). We have also been unable to devise any type of work

practice standard that would result in mercury emissions reductions.[3]

It has been argued, however, that when considering floor standards, the means of attaining those standards is legally irrelevant. All that matters, the argument goes, is what emission level was measured in a test result and that such a measurement, by definition, must be considered to have been achieved in practice. The *National Lime Association* and the subsequent *Cement Kiln Recyclers Coalition* v. *EPA,* 255 F. 3d 855 (DC Cir. 2001) decisions are said to mandate this result.

The EPA disagrees. EPA's position is that ''achieved in practice'' means achievable over time, since sources are required to achieve the standards at all times. 70 FR at 59436 (Oct. 12, 2005). This position has strong support in the caselaw. *Sierra Club* v. *EPA,* 167 F. 3d 658, 665 (DC Cir. 1999); *Mossville Environmental Action Now* v. *EPA,* 370 F. 3d 1232, 1242 (DC Cir. 2004). Here, as just shown, there are no standards which are consistently achievable over time because of sources' inability to control inputs.

Second, *National Lime* and *CKRC* did not involve facts where the levels of performance reflected in performance tests are pure happenstance (composition of HAP in raw materials and fossil fuel used the day the test was conducted), but cannot be replicated or duplicated. Put another way, these cases did not consider situations where means of control are infeasible and where no source can duplicate a quantified level of emissions due to uncontrollable variability of raw materials and fuels. Indeed, the court has rejected standards based on raw material substitution where this means of control is not feasible. (See *Sierra Club* v. *EPA,* 353 F. 3d 976, 988 (DC Cir. 2004) (''substitution of cleaner ore stocks was not * * * a feasible basis on which to set emission standards. Metallic impurity levels are variable and unpredictable both from mine to mine and within specific ore deposits, thereby precluding ore-switching as a predictable and consistent control strategy'').[4] Moreover, the court has made clear that since standards must be met continuously (i.e., any single test can be a violation of the standard), MACT standards (including floor standards) must reflect maximum daily variability a source can experience in operation, including variability associated with HAP concentrations in raw materials (*Mossville Environmental Action Now* v. *EPA,* 370 F. 3d at 1242.) Here, as discussed above, that level of variability is beyond the control of any source and thus, cannot be accounted for in a floor standard.

It is argued further, however, that even if individual sources (including those in the pool of best performing sources) cannot reduce HAP concentrations in raw materials and fossil fuels, they may achieve the same reductions by adding back-end pollution control. Applied here, the argument would be that even though no sources (not even the lowest emitters in the individual performance tests) can use fossil fuel or raw material substitution to achieve emission levels for mercury, they could achieve those levels by installing some type of back-end pollution control technology such as activated carbon. The thrust of this argument is essentially to impermissibly bypass the beyond-the-floor factors set out in CAA section 112(d)(2) under the guise of adopting a floor standard. (See note three above.) Suppose that EPA were to adopt a floor standard dominated by emission levels reflecting mercury concentrations present in a few sources' raw materials and fossil fuels during their performance tests. Suppose further that no source in the data base can achieve that floor standard without adding considerable back-end control equipment (at great cost and great additional energy utilization) because test results based on fossil fuel and raw material levels are neither replicable nor duplicable. In this situation, we believe that we would have improperly adopted a beyond-the-floor standard. Because the standard is nominally a floor, we would not have considered the beyond-the-floor factors (cost, energy, and nonair impacts) set out in section 112(d)(2) of the CAA. Yet the standard would force all sources, including those ''best performing sources'' whose performance ostensibly is the basis for the floor, to retrofit with control devices not presently in use. We can take such action only if the standard is ''achievable'' under section 112(d)(2), meaning justified after considering cost, energy, and nonair environmental impacts.

We evaluated a mercury beyond-the-floor standard for new and existing cement kilns based on use of activated carbon injection (ACI) with an additional PM control device. The total capital cost of an ACI system is estimated to range from $761,000 to $5.5 million per kiln. The total annual costs of an ACI system are estimated to range from $477,000 to $3.7 million per kiln. These costs include the carbon injection system and an additional baghouse necessary to collect the carbon separately from the CKD. The cost per ton of mercury reduction for ACI applied to cement kilns ranges from $22.4 million to $56 million. The use of ACI for mercury control could also result in a co-benefit of additional control of dioxins and furans. However, the current NESHAP for portland cement mandates stringent levels of dioxin emissions based on the floor level of control. Even if ACI further reduces dioxin emissions to zero, the cost would be in the range of $2 billion to $7 billion per pound. Therefore, we do not consider the dioxin emission reduction co-benefit to be significant.

We also note that the application of ACI would generate additional solid waste and increase energy use. We estimate that the per kiln impacts would be 95 to 1,600 tons per year (tpy) of solid waste and 526,200 to 9.3 million kilowatt hours (kWhr) of electricity demand.

Based on the relatively low levels of existing mercury emissions from individual NHW cement kilns, the high costs (on both a dollars-per-year and a dollars-per-ton basis) of reducing these emissions by ACI, and the negative nonair environmental impacts, we are proposing that this beyond-the-MACT-floor option for reducing mercury from new and existing NHW kilns is not justified.

B. Determination of MACT for HCl Emissions

In developing the 1999 Portland Cement NESHAP we concluded that no add-on air pollution controls were being used whose performance could be used as a basis for the MACT floor for existing portland cement plants. For new source MACT, we identified two kilns that were using alkaline scrubbers for the control of sulfur dioxide (SO_2) emissions. But we concluded that because these devices were operated only intermittently, their performance could not be used as a basis for the MACT floor for new sources. Alkaline scrubbers were then considered for

[3] Indeed, most of the options EPA considered are really beyond-the-floor alternatives, because they reflect practices that differ from those now in use by any existing source (including the lowest emitters). (Coal switching, switching to natural gas, and raw material switching are examples.) In EPA's view, a purported floor standard which forces every source in a category to change its practices is a beyond-the-floor standard. Such a standard may not be adopted unless EPA takes into account costs, energy, and nonair environmental impacts.

[4] Although this language arose in the context of a potential beyond-the-floor standard, EPA believes that the principle stated is generally applicable. The MACT standards are technology-based, and if there is no technology (i.e., no available means) to achieve a standard, i.e., for a source to achieve a standard whenever it is tested (as the rules require), then the standard is not an achievable one.

beyond-the-floor controls. Using engineering assessments from similar technology operated on municipal waste combustors and medical waste incinerators, we estimated costs and emissions reductions. Based on the costs of control and emissions reductions that would be achieved, we determined that beyond-the-floor controls were not warranted (63 FR 14203, March 24, 1998).

We reexamined establishing a floor for control of HCl emissions from new portland cement sources. Since promulgation of the NESHAP, wet or dry scrubbers have been installed and are operating at a minimum of four portland cement plants.[5] Only one of the plants has conducted emissions tests for HCl using EPA Method 321 of appendix A to 40 CFR part 63. All of the test results for HCl were below the detection limits of 0.2 to 0.3 parts per million by volume (ppmv) for the measurement method.

Based on the presence of continuously operated alkaline scrubbers at portland cement plants, we believe that the performance of continuously operated alkaline scrubbers represents MACT for new sources, but we do not have sufficient test data to set an emission level. As noted above, the one source tested had HCl emission levels below the detection limit. However, we do not have data for the inlet to the source's scrubber. In some cases, HCl emissions from cement kilns with no add-on controls are below 1 ppmv, but can also be above 40 ppmv. We cannot determine if the low outlet concentration at the one tested source is solely due to the performance of the control device, or to a low inlet concentration. Therefore, we cannot state that any new cement kiln can reduce HCl emissions to levels below detection.

However, section 112(d)(3) of the CAA states that new source MACT may be based on the performance of the best controlled similar source. Alkaline scrubbers designed for control of SO_2 routinely achieve a 90 percent reduction in SO_2 emissions when applied to coal-fired boilers. Alkaline scrubbers are known to be more effective in removing HCl than SO_2. Therefore, it is reasonable to assume that an alkaline scrubber can achieve a 90 percent emission reduction of HCl if the inlet loadings are comparable to those seen on coal-fired boilers. However, it is also known that the removal efficiency of a scrubber can decrease as the inlet loading decreases. For this reason, we evaluated the performance of alkaline scrubbers applied to combustion of municipal solid waste, which has an HCl emissions loading more similar to a cement kiln than a coal-fired boiler. Based on an engineering assessment of HCl scrubbers used in municipal waste combustion applications and on vendor design information, we determined an alkaline scrubber could achieve a 15 ppmv HCl outlet concentration at low HCl inlet loadings, or at least a 90 percent HCl emissions reduction at HCl inlet loadings of 100 ppmv or greater. Therefore, we are proposing a new source MACT for HCl emissions of 15 ppmv at the control device outlet, or a 90 percent HCl emissions reduction measured across the scrubber.

Note that we are not proposing to retroactively impose this requirement on currently operating new sources. It will only apply to new sources that commence construction after December 2, 2005. Currently operating sources classified as new under the 1999 Portland Cement NESHAP would be required to meet the same requirements as existing sources.

This approach is legally permissible and reasonable. The underlying principle for having new sources meet stricter standards (in the case of new source MACT standards, standards reflecting the performance of the best controlled similar source) is that such sources are essentially starting from scratch and, therefore, can most efficiently utilize the best means of pollution control. They will not need to retrofit. Sources classified as new under the 1999 Portland Cement NESHAP are not in this position. They have already commenced construction (and most likely started operating) and so are not in the position of a source starting *de novo.* Consequently, the only new sources for purposes of the proposed amendments are those commencing construction or reconstruction after December 2, 2005. We note that the position taken here is consistent with that proposed (and recently finalized) for hazardous waste combustion sources. See 69 FR 21363, April 20, 2004.

In order to show compliance with the 15 ppmv emission limit, we are proposing to require a performance test using one of the following EPA methods:

(1) Method 26/26A of Appendix A to 40 CFR part 60. Method 26A must be used when HCl could be associated with PM (for example, the association of HCl with water droplets emitted by sources controlled by a wet scrubber); otherwise you may use Method 26.

(2) Method 320 or 321 of Appendix A to 40 CFR part 63.

(3) ASTM Method D6735–01, Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method, provided that specific provisions in 40 CFR 63.1349, paragraphs (b)(5)(iii)(A) through (F) are followed. These test methods are consistent with the HCl test methods used in similar standards. To determine compliance with the percent reduction requirement we are proposing to require the source to test at the scrubber inlet and outlet using one of the above methods and calculate a percent reduction based on the concentration difference (corrected to 7 percent oxygen) divided by the inlet concentration and multiplied by 100.

We also reexamined the MACT floor for existing sources. We first considered setting the floor based on the performance of an alkaline scrubber. However, because only four facilities currently have operating alkaline scrubbers, the performance of alkaline scrubbers would not be indicative of the median of the top 12 percent of the source category. Therefore, we examined other alternatives that might constitute a floor. Because HCl emissions originate from chlorine in feed and fuel materials, we considered the use of feed/fuel selection as a potential option to reduce the amount of chlorine entering the kiln. Under this option, low-chlorine fuel and/or feed materials would be used to lower HCl emissions from kilns. However, this option presents the same problems previously discussed for using low-mercury containing feed and fuels. We have no data indicating the widespread availability of low-chlorine deposits of feed, or whether such deposits even exist. As with other contaminants, concentrations are variable between deposits as well as within deposits. The result is that uniformly low-chlorine feed is not available on a widespread basis. Furthermore, there is no information that a low-chlorine deposit of feed materials is likely also to be low in mercury, other metal HAP, or organic HAP material. Such limitations and uncertainties make this an unrealistic option. We also considered the option of changing to a low-chlorine fuel, such as natural gas. This option was also determined to be infeasible due to limits on gas availability as previously discussed in the mercury MACT determination[6]

[5] None of these four kilns burn hazardous waste.

[6] As explained above, standards reflecting these control practices (which we do not believe are feasible) would be beyond-the-floor standards because they would force changes in practice by all sources in the category, even the lowest emitters in the performance tests.

Another control technique we considered was a work practice control based on the use of the kiln and PM control. Because the kiln and PM control system contain large amounts of alkaline CKD, the kilns themselves remove a significant amount of HCl (which reacts with the CKD and is captured as particulate). See 69 FR 21259, April 20, 2004. We considered setting an emission limit based on reported kiln HCl emissions which reflects this natural scrubbing. However, this approach has some of the limitations previously discussed regarding establishing a floor for mercury. The HCl emissions at any one time are a function of the chlorine content of the feed materials and fuel. We could not state that the levels of HCl emissions from any one kiln could be duplicated by other kilns, or by the tested kiln on a continuous basis. We also have no data that would allow us to establish a typical percent reduction in HCl emissions resulting from the alkaline environment in the kiln.

There are total HCl emissions reductions data for cement kilns that fire hazardous waste (a separate class of cement kiln, as noted earlier). These data indicate that 80 percent of the kilns achieve at least a 95 percent reduction in total chlorine emissions at the kiln outlet compared to the total chlorine in the feed material (69 FR 21259, April 20, 2004). However, the hazardous waste being burned in the kiln has a significant amount of chlorine compared to the fuel and feed materials of a cement kiln that does not burn hazardous waste. As previously noted, the overall percent reduction of HCl goes down as the total amount of HCl present is reduced. Therefore, the percent reduction seen in kilns that burn hazardous waste is not applicable to kilns that do not fire hazardous waste.

It is nonetheless clear that all cement kilns will reduce emissions of HCl due to the kilns' alkaline operating conditions. We cannot measure the extent of emission reduction over time due to the types of variability just discussed. Because we cannot set a numeric emission limit and consequently cannot prescribe or enforce an emission standard within the meaning of section 112(h) of the CAA, we are proposing a floor for existing facilities as the work practice of operating the cement kiln under normal operating conditions and operating a particulate control device to capture HCl present in or adsorbed on the kiln particulate and have added this language in 40 CFR 63.1344.

We are proposing to allow existing sources and new sources commencing construction before the publication date of the proposed amendments 1 year after publication of the final amendments to be in compliance with the amendment as proposed. The CAA requires compliance with MACT standards ''as expeditiously as practicable,'' and in virtually no case longer than 3 years after promulgation of the standard (CAA section 112(i)(3)(A)). Because the proposed amendment does not require the installation of a control device, we do not believe a 3-year compliance date is the most expeditious compliance date. We considered proposing a compliance date as the date the rule amendment is promulgated as proposed. However, as discussed below, we are proposing a compliance date of 1 year after publication of the final amendments for the amended THC/carbon monoxide (CO) requirements. We believe it is more reasonable to have one compliance date for all the proposed rule amendments. We do not believe this decision will measurably change the environmental benefits of the HCl standard.

We also evaluated requiring the use of an alkaline scrubber as a beyond-the-floor control option for existing sources. Based on the estimated performance, annual HCl emissions reductions estimates range from 12 tpy of HCl and 27 tpy of SO_2, to 200 tpy of HCl and 600 tpy of SO_2, per kiln. The total capital cost of installing an alkaline scrubber on an existing kiln is estimated to range from $1.1 to $5.1 million per kiln. The total annual cost is estimated to range from $336,000 to $1.7 million per kiln (Docket No. A–92–53). The cost per ton of HCl removed ranges from $8,500 to $28,000. In addition, the beyond-the-floor option would result in per-kiln nonair environmental impacts of 5,000 to 84,100 tons of scrubber slurry for disposal, 4.7 to 107 million gallons of additional water usage, and increased electricity use of 219,300 to 2.4 million kWhr. We do not consider these costs and nonair environmental impacts reasonable for the emissions reductions achieved.

We are proposing a format of volume per volume concentration for the emission limit. The specific units of the emission limit are ppmv (corrected to 7 percent oxygen) or a percent reduction. These formats have historically been used by EPA for many air emission standards and are consistent with the format of the NESHAP for cement kilns that burn hazardous waste. The concentration is corrected to 7 percent oxygen to put concentrations measured in stacks with different oxygen concentrations on a common basis, and because the typical range of oxygen concentrations in cement kiln stack gas is from 5 to 10 percent oxygen, we consider 7 percent representative. The HCl concentration or percent reduction will be measured during an initial performance test and at least every 5 years thereafter. During this test, you will establish scrubber operating parameters, including pH and liquid-to-gas ratio, and continuously monitor these parameters.

The EPA also solicits comment on adopting alternative risk-based emission standards for HCl pursuant to section 112(d)(4) of the CAA. Both existing and new portland cement sources could be eligible for such standards. The EPA is considering two possible approaches for establishing such standards. Alternative risk-based standards would be based on national exposure standards determined by EPA to ensure protection of public health with an ample margin of safety and that do not pose adverse environmental impacts.

Under the first approach, dispersion modeling of representative worst-case sources (or, preferably, all sources) within the portland cement category would be conducted to establish a level for comparison with the risk-based national standards. This would be done by determining that the annual HCl emissions rate for a cement kiln's emissions do not result in chronic human exposures which might exceed a Hazard Quotient (HQ) of 1.0.[7]

Also under this approach, the same risk-based national standards would be established for each source category. The EPA has proposed a substantially similar approach for HCl and total chlorine emissions from hazardous waste-burning cement kilns (see proposed CAA section 112(d) standards at 69 FR 21305, April 20, 2004), and adopted similar approaches (again for HCl) in CAA section 112(d) rules for lime kilns (69 FR 394, January 5, 2004) and pulp and paper facilities (66 FR 3180, January 12, 2001).

In determining the appropriate risk-based standard on a national basis, EPA

[7] Noncancer risk assessments typically use a metric called the Hazard Quotient (HQ) to assess risks of exposures to noncarcinogens. The HQ is the ratio of a receptor's potential exposure (or modeled concentration) to the health reference value or threshold level (*e.g.*, Reference Concentration) for an individual pollutant. The HQ values less than 1.0 indicate that exposures are below the health reference value or threshold level and, therefore, such exposures are without appreciable risk of effects in the exposed population. HQ values above 1.0 do not necessarily imply that adverse effects will occur, but that the likelihood of such effects in a given population increases as HQ values exceed 1.0. See *http://www.epa.gov//ttn/atw/nata/gloss1.html*.

would use the reference concentration (RfC) for HCl that is currently published in EPA's Integrated Risk Information System as the denominator in the calculation of HQ mentioned in the previous paragraph. The RfC is defined as an estimate of a continuous inhalation exposure for a given duration to the human population (including susceptible subgroups) that is likely to be without an appreciable risk of adverse health effects over a lifetime. As such, HQ values at or below 1.0 should be considered to provide public health protection with an ample margin of safety and, thus, can be used to develop the national risk-based emission standards. Due to data limitations regarding the universe of cement kiln sources nationwide, EPA is not currently able to conduct a national analysis to determine if all cement kilns are emitting HCl at a rate that would meet the risk-based standards. However, EPA is prepared to evaluate documentation submitted in public comment.

Under the second approach, the risk-based standards would be developed on a source-by-source basis, with sources choosing whether to seek an alternative risk-based limit. The risk-based standards would consist of a nationally applicable, uniform algorithm—again using the national exposure level for HCl just discussed. We would use this algorithm to establish site-specific emission limitations based on site-specific input from each source choosing to use this approach. Such risk-based standards would provide a uniform level of risk reduction. The EPA proposed this approach for hazardous waste combustion sources (69 FR 21297, April 20, 2004) and adopted it for industrial boilers (69 FR 55218, September 13, 2004).

Sources would then calculate an HCl emission rate either by applying values from a look-up table provided by EPA, applicable to sources located in either flat or simple elevated terrain,[8] or, if the source is located in a different type of terrain, conduct a site-specific compliance demonstration. Sources using look-up tables would have to use the stack height and stack diameter from their kiln and the distance between the stack and the property boundary. At this time, due to data limitations regarding the universe of cement kiln sources nationwide, EPA cannot develop look-up tables for this source category. However, EPA is prepared to evaluate any information submitted in public comment and, if appropriate, use it as the basis for developing such look-up tables. If EPA is unable to develop look-up tables for the final rule, only site-specific risk assessments could be used as the basis for implementing this approach. For the site-specific demonstration, a source may use any scientifically accepted, peer-reviewed risk assessment methodology to calculate an annual average HCl emission rate limit. To determine that emission rate limit, the site-specific demonstration must: (1) Estimate long-term inhalation exposures through estimation of annual or multiyear average ambient concentrations; (2) estimate the inhalation exposure for the actual individual most exposed to the facility's emissions from hazardous waste combustors, considering locations where people reside and where people congregate for work, school, or recreation; (3) use site-specific, quality-assured data wherever possible; (4) use health-protective default assumptions wherever site-specific data are not available, and (5) contain adequate documentation of the data and methods used for the assessment so that it is transparent and can be reproduced by an experienced risk assessor and emissions measurement expert.

These eligibility demonstrations would then be reviewed and approved or disapproved by the permitting authority. Permitting procedures, compliance demonstration requirements, and subsequent compliance monitoring requirements would be established in a manner similar to the proposed approach for hazardous waste combusters (69 FR 21302, April 20, 2004).

C. Determination of MACT for THC Emissions

During the development of the 1999 Portland Cement NESHAP, EPA identified no add-on air pollution control technology being used in the portland cement industry whose performance could be used as a basis for establishing a MACT floor for controlling THC emissions (the surrogate for organic HAP) from existing sources. The EPA did identify two kilns using a system consisting of a precalciner (with no preheater), which essentially acts as an afterburner to combust organic material in the feed. The precalciner/no preheater system was considered a possible basis for a beyond-the-floor standard for existing kilns and as a possible basis for a MACT floor for new kilns. However, this system was found to increase fuel consumption relative to a preheater/precalciner design, to emit six times as much SO_2, two and one half times as much oxides of nitrogen (NO_X), and 1.2 times as much carbon dioxide (CO_2) as a preheater/precalciner kiln of equivalent clinker capacity. Taking into account the adverse energy and environmental impacts, we determined that the precalciner/no preheater design did not represent MACT (63 FR 14202, March 24, 1998). We also considered feed material selection for existing sources as a MACT floor technology and concluded that this option is not available to existing kilns, or to new kilns located at existing plants because these facilities generally rely on existing raw material sources located close to the source due to the cost of transporting the required large quantities of feed materials. However, for new greenfield kilns, feed material selection as achieved through appropriate site selection and feed material blending is considered new source MACT (63 FR 14202, March 24, 1998).

We have reexamined MACT for THC for both new and existing facilities. Since the publication of the final NESHAP, we have promulgated standards for cement kilns that fire hazardous waste (40 CFR 63.1204(a)(5)) and proposed a revision to these standards (40 CFR 63.1220(a)(5)) (69 FR 21379, April 20, 2004). We are proposing to incorporate the same standards in the Portland Cement NESHAP. The proposed standards are shown in the following table:

[8] Flat terrain is terrain that rises to a level not exceeding one half the stack height within a distance of 50 stack heights. Simple elevated terrain is terrain that rises to a level exceeding one half the stack height, but that does not exceed the stack height within a distance of 50 stack heights.

TABLE 2.—PROPOSED THC/CO EMISSIONS LIMITS FOR CEMENT KILNS

		Proposed emission limit	
		ppmv THC [3 4]	Averaging period
Existing kiln	No Alkali bypass [6]	20 or 100 ppmv CO [1]	Hourly.
	w/bypass Main [5]	No limit	N/A.
	Alkali Bypass [6]	10 or 100 ppmv CO [1]	Hourly.
New kiln at an existing plant.	No Alkali Bypass [6]	20 or 100 ppmv CO [1]	Hourly.
	w/bypass Main [5]	No limit	N/A.
	Alkali Bypass [6]	10 or 100 ppmv CO [1]	Hourly.
New kiln at greenfield facility.	No Alkali Bypass [6]	20 or (50 THC and 100 ppmv CO) [2].	20 is hourly, 50 is monthly.
	w/bypass Main [5]	50 and	Monthly.
	Alkali Bypass [6]	10 or 100 ppmv CO [1]	Hourly.

[1] Sources that choose to meet the hourly CO standard, must also meet the THC standard at performance test.
[2] Sources that choose to meet the 50/100 standard, must also meet the 20 ppmv THC standard at performance test.
[3] ppmv means parts per million on a dry volume basis.
[4] Measured as propane and corrected to seven percent oxygen.
[5] Main kiln stack.
[6] Alternately, a facility may meet the alkali bypass standard if they use a midkiln gas sampling system that diverts a sample of kiln gas that contains levels of carbon dioxide or hydrocarbons representative of levels in the kiln.

Our rationale for applying these standards to cement kilns firing hazardous waste may be found beginning at 64 FR 52885, September 30, 1999. Essentially, the THC and CO standards guarantee that the kiln will operate under good combustion conditions and will minimize formation (and hence, emissions) of organic HAP. We believe that the control of THC emissions from cement kilns which do not fire hazardous waste should be no more difficult to control than emissions for kilns that do fire hazardous waste because good combustion practices are maintainable by either type of kiln, and the hazardous waste cement kilns would be the more challenged in that regard. Therefore, cement kilns that do not fire hazardous waste should be able to achieve the same emission limits showing good combustion conditions as kilns that fire hazardous waste. Both types of kilns use the same feedstock materials and fossil fuels, and it would be expected that lack of any hazardous waste feed for a NHW cement kiln should make it easier to control the combustion process. Because we have no data upon which to set a different standard, and because these levels are indicative of good combustion in any case, the use of the standards for cement kilns firing hazardous waste is appropriate here.

The proposed standards have different limits based on the sampling location. As noted above, the THC emission limits are based on good combustion practices. However, even with good combustion organic material in the limestone, feed material can be volatilized by the gases at the cold end of the kiln where feed is introduced, resulting in increased THC emissions. Therefore, measuring THC in the alkali bypass or at the midpoint of the kiln using a midkiln gas sampling system should result in a more accurate assessment of kiln combustion conditions. For this reason, we are proposing different standards if an alkali bypass or midkiln gas sampling system are available, and are requiring THC and CO measurements be made in the alkali bypass or midkiln gas sampling system, if available.

We are proposing to use the term ''midkiln gas sampling system'' to denote the situation where the source which does not have an alkali bypass can take a sample of kiln gas that is representative of the CO or THC levels in the kiln. We are allowing a midkiln gas sampling system to be used if present on the kiln. We are not aware of any NWH cement kiln that has a midkiln gas sampling system, but we are aware of one cement kiln that burns hazardous waste that does. If a facility does not have an alkali bypass or a midkiln gas sampling system, we are not requiring that one be installed. In this case, the facility should make THC or CO measurements in the main stack. However, we also do not preclude a facility from installing a midkiln gas sampling system if desired.

The performance levels shown on the table above are for both new and existing sources (with the exception of new greenfield kilns, which have a 50 ppmv standard measured in the main stack as discussed below). We believe that good combustion conditions are indicative of the performance of the median of the best performing 12 percent of existing sources. We have no data to show that good combustion conditions in a new kiln result in any different level of performance than good combustion conditions in an existing kiln.

The promulgated standards for cement kilns that fire hazardous waste also include a requirement that facilities electing to monitor CO in lieu of THC must also meet the THC emission level during a THC performance test. We are proposing to include this requirement in the Portland Cement NESHAP. The reason for this requirement is that there can be cases where low CO emissions may not be indicative of low THC emissions. The purpose of the THC performance test is to definitely establish that monitoring of CO for a specific facility will provide an accurate surrogate for THC, and so assure that good combustion conditions exist. We recognize for kilns with no alkali bypass or midkiln gas sampling system, there is a possibility that organic materials in the limestone feed could potentially result in high test results. However, we believe that for the short duration of a THC performance test, a facility could potentially use feed blending to minimize the contribution of the feed material. (Note that though we believe it is possible over the short term to obtain enough low organic feed material to pass a performance test, we do not believe it is possible to do so over the long term, except for greenfield kilns where the limestone feed mine can be sited with limestone organic materials content in mind.) However, the result of this requirement is that during performance tests, some facilities will be required to temporarily meet THC emission levels at the main stack that are below the new source floor for greenfield kilns of 50 ppmv. Therefore, we are specifically soliciting comment

on the necessity of retaining the requirement of a THC performance test when a facility elects to monitor CO and the achievability of the THC limits during testing, and further soliciting test data that may support other emissions levels.

We are not proposing any change to the current THC requirement for new greenfield kilns of 50 ppmv measured in the main stack, because this requirement was not challenged. We are not reconsidering this requirement. However, we are including the 50 ppmv standard in the proposed rule language to provide a complete picture of the THC standards as a convenience to the reader.

We are proposing that all of the THC/CO standards in the table above be met on a continuous basis (based on an hourly average) and be monitored using a continuous emissions monitor (CEM). For sources electing to meet a THC standard, we are proposing to retain the requirement that the monitor meet performance specification 8A contained in appendix A of 40 CFR part 60 and to add the additional quality assurance requirements contained in procedure 1 of appendix F to 40 CFR part 63. We are proposing that continuous monitors for CO must meet performance specification 4B contained in 40 CFR part 60 and adding the additional quality assurance requirements contained in procedure 1 of appendix F to 40 CFR part 63. These are the same performance specification requirements contained in the NESHAP for cement kilns that fire hazardous waste, and we consider these requirements to be appropriate for NHW kilns. If a facility elects to meet an alternative CO standard in lieu of a THC standard, we are proposing that they do not have to continuously monitor for THC, but must use EPA Method 25A in appendix A of 40 CFR part 60 to demonstrate compliance with a THC standard every 5 years during a performance test.

We are proposing to allow existing sources and new sources commencing construction before the publication date of the proposed amendments 1 year after publication of the final amendments to be in compliance with the amendments as proposed. The CAA requires compliance with MACT standards ''as expeditiously as practicable,'' and in virtually no case longer than 3 years after promulgation of the standard (CAA section 112(i)(3)(A)). Because the proposed standards do not require the installation of a control device, we do not believe a 3-year compliance date is the most expeditious compliance date. We believe 1 year is sufficient for a source to purchase, install, and test a monitoring system. However, we are specifically soliciting comment and supporting data on the proposed requirement.

We also considered beyond-the-floor options for existing sources of substituting raw materials with lower organic contents. However, except for new greenfield kilns, we determined this beyond-the-floor option was not feasible. As previously discussed, facilities are limited to obtaining limestone (which contains the majority of the organic material that contributes to THC emissions) from a co-located or a nearby mine. It is not possible to set a national standard based on the assumption that all affected sources will have access to limestone with low organic content. In the case of a greenfield facility, this is not the case because the mine site can be selected with the limestone organic content as a criterion. As noted at proposal of the Portland Cement NESHAP, selection of sites with low organic content limestone has been used for at least two existing sites (63 FR 14202, March 24, 1998). However, this option is limited to new kilns at greenfield facilities.

At proposal of the Portland Cement NESHAP, we considered the use of a precalciner/no preheater system as the basis for new source MACT and the basis for a beyond-the-floor option for existing sources. However, due to the adverse energy impacts and secondary air impacts, this option was determined not to represent best control for new sources or an acceptable beyond-the-floor alternative for existing sources (63 FR 14202, March 24, 1998).

For the THC emission standard, we proposed to retain the volume per volume concentration emission limit format. The specific units of the emission limit are ppmv (as propane, corrected to 7 percent oxygen). This emission limit format has historically been used by EPA for many air emission standards. This format is consistent with the format of the NESHAP for cement kilns that burn hazardous waste. The concentration is corrected to 7 percent oxygen to put concentrations measured in stacks with different oxygen concentrations on a common basis, and because the typical range of oxygen concentrations in cement kiln stack gas is from 5 to 10 percent oxygen, we consider 7 percent representative. The THC or CO concentration can be monitored directly with the CEM required by the proposed standard. The reference or calibration gas for the CEM is propane, and the THC data analyzed in the development of the proposed standard were referenced to propane. Therefore, propane is the appropriate reference compound for concentration data.

For the 10 and 20 ppmv THC and 100 ppmv CO limits, we are proposing to demonstrate compliance using a CEM and a 1-hour averaging period. If a facility elects to continuously monitor CO, we are proposing to require that the source also meet the THC limit during a 3-hour performance test using EPA Method 25A. The reason for the THC performance test requirement is to ensure that monitoring CO will be representative of low THC emissions (and hence, good combustion conditions, as explained earlier). We are proposing to retain the 1-hour averaging period specified in the NESHAP for cement kilns that burn hazardous waste.

D. Evaluation of a Beyond-the-Floor Control Option for Non-Volatile HAP Metal Emissions

In our MACT determination for PM (the surrogate for non-volatile HAP metals), we concluded that well-designed and properly operated FF or ESP designed to meet the new source performance standards (NSPS) for portland cement plants represent the MACT floor technology for control of PM from kilns and in-line kiln/raw mills. Because no technologies were identified for existing or new kilns that would consistently achieve lower emissions than the NSPS, EPA concluded that there was no beyond-the-floor technology for PM emissions (63 FR 14199, March 24, 1998).

In *National Lime Association* v. *EPA*, the court held that EPA had failed to adequately document that substituting natural gas for coal was an infeasible control option, and also had not assessed nonair environmental impacts when considering beyond-the-floor standards for HAP metals (233 F. 3d at 634–35). As a result, the court remanded the beyond-the-floor determination for HAP metals for further consideration by EPA.

In our reexamination of a beyond-the-floor MACT control standard for HAP metals, we considered both fuel switching and changing to feed materials with a lower metals content. Both of these options suffer from the problems previously discussed for using low-mercury fuels/feed materials to reduce mercury emissions. These problems are that low-metals fuels and feed are not universally available (*Sierra Club* v. *EPA*, 353 F. 3d at 988 (substitution of alternative raw materials not feasible, so ''EPA reasonably refused to set beyond-the-floor standards * * * based on a requirement that smelters switch'' raw materials)). In addition, we

determined that even if low-metals fuel/feeds were available, the cost of requiring sources to use them would be unreasonable, indeed prohibitive. More detailed information on this analysis may be found in the docket for the proposed amendments. Because the cost of this beyond-the-floor is prohibitive, we did not perform a detailed analysis of the nonair environmental impacts. There should be no water quality impacts for this option since no additional water is needed. Any effects on solid waste generation would be expected to be minimal because the same amount of CKD would be generated. Likewise, energy implications are minimal because the same amount of energy use would occur. Nonetheless, for reasons of the high costs relative to the potential emissions reductions, EPA is not proposing a beyond-the-floor standard based on material or fuel substitution, even if this were a feasible alternative.

IV. Other Issues on Which We Are Seeking Comment

On April 5, 2002, we amended the introductory text of 40 CFR 63.1353(a) to make it more clear that affected sources under the Portland Cement NESHAP were not subject to 40 CFR part 60, subpart F (67 FR 16615, April 20, 2002). In making this change, we inadvertently deleted paragraphs (a)(1) and (2) of 40 CFR 63.1353. The language in these paragraphs is still necessary for determining the applicability of 40 CFR part 60, subpart F. We are proposing to reinstate these paragraphs as originally written in the final rule.

On April 5, 2002, we also amended 40 CFR 63.1340(c) to read as follows:

> For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

This amendment implemented part of a settlement agreement between EPA and the Portland Cement Association (PCA), which was signed September 7, 2001. However, the PCA has since brought to our attention what they considered to be a misinterpretation of the amended rule text for a specific facility in Pennsylvania. The facility in question has a limestone raw materials storage area followed by conveyers and other raw materials storage, all of which feed into a bin labeled ''raw mill feed bin.'' The PCA claimed that the raw mill feed bin was the first point subject to the Portland Cement NESHAP, not the limestone raw materials storage area. We had interpreted the first point subject to the Portland Cement NESHAP as the limestone raw materials storage area. The PCA based their claim on the specific rule text ''raw material storage, which is just prior to the raw mill'' and the use of the term, ''the first conveyor transfer point subject to this subpart,'' rather than the term ''conveyers.'' They noted that the raw mill feed bin met the definition of raw material storage because it contained raw material, was ''just prior'' to the raw mill, and there was only one conveyer between the raw mill feed bin and the raw mill. The PCA also stated that during the negotiation, they had made it clear that this was the proper interpretation of this language.

In an effort to resolve this issue, we first reviewed the documentation leading up to the settlement agreement. In a letter dated December 27, 1999, the PCA's counsel wrote ''the final rule applies to sources with on-site nonmetallic mineral processing facilities for which the secondary crusher is located in the sequence of materials handling operation at a point after the first transfer point associated with the conveyer transferring material from raw material storage to the raw mill'' (docket No. A–92–53). He noted that these sources ''are required to comply with the standards under NSPS, 40 CFR part 60, subpart OOO, for nonmetallic mineral processing operations.'' In the last version of the settlement agreement, the section concerning the revised rule language discussed above was titled ''applicability of the final rule to crushers.'' Based on these documents, we do not see any written evidence that the rule language had any purpose other than to clarify that secondary crushers were not subject to the Portland Cement NESHAP.

In addition, we believe the PCA interpretation is not reasonable when reading the entire final NESHAP. The paragraph also states that ''In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart.'' If a facility has a crusher after raw material storage, then the raw material storage is not ''just prior'' to the raw mill based on the PCA interpretation of the meaning of ''just prior.'' In addition, there cannot be just one ''conveyer,'' there are two—the conveyer between raw material storage and the crusher, and a conveyer between the crusher and the raw mill. Given these facts, we believe that the rule language as written is open to more than one interpretation.

In our review, we also observed that the original Portland Cement NSPS were promulgated in 1971. At that time, we established the portland cement source category to include raw materials storage. We interpret this to mean any storage that would be required by a typical cement plant, regardless of any co-located nonmetallic minerals operation. In 1985, we promulgated the Nonmetallic Minerals Operations NSPS. In order to avoid potential overlap, we specifically stated in 40 CFR 60.670 that a source subject to the Portland Cement NSPS was not subject to the Nonmetallic Minerals Operations NSPS. We further stated that once any emission point source became subject to the Portland Cement NSPS, all emission point sources that follow in the process are exempt from the Nonmetallic Minerals Operations NSPS. The CAA specifically states that, if possible, the NSPS and NESHAP source categories should be the same (section 112(c)(1)). Based on that requirement, we believe we should continue to include any raw materials emissions source that would be potentially subject to the Portland Cement NSPS as an affected source under the Portland Cement NESHAP.

As an example, if we were to accept the PCA interpretation, two storage bins at the facility in question, which have no connection with the nonmetallic minerals operation, but are obviously part of the portland cement plant, would not be covered by the Portland Cement NESHAP, only because a nonmetallic minerals operation was present at the same plant site. We do not believe that this result is sensible.

We believe it is important to continue to cover all raw materials storage and handling points under the Portland Cement NESHAP, the source category to which these raw material storage operations relate. Though these points may not be the majority of the emission inventory at a particular facility, they could, in specific situations, contribute significantly to a facility's fugitive PM emissions. We note that the actual rule requirements are mainly for EPA Method 22 of 40 CFR part 60, appendix A, reporting and recordkeeping. Facilities already have to perform daily EPA Method 22 observations on certain equipment. We believe that the further requirement to make monthly to annual observations of visible emissions from

materials handling points imposes a minor burden and contributes significantly to reducing fugitive dust problems that may occur at these types of facilities.

We are soliciting comment on the best resolution of this issue. We are considering (but are not limiting ourselves to) the following options:

(1) Changing the wording of 40 CFR 63.1340(c) to make it clear that all raw materials storage and handling is covered by the NESHAP, but that crushers (regardless of their location) are not.

(2) Including crushers as an affected source in the Portland Cement NESHAP and incorporating the current requirements applicable to crushers contained in 40 CFR part 60, subpart OOO (and correspondingly, exempting crushers covered by the Portland Cement NESHAP from 40 CFR part 60, subpart OOO).

V. Summary of Environmental, Energy, and Economic Impacts

A. What Facilities Are Affected by the Proposed Amendments?

We estimate that there are approximately 118 cement plants currently in operation. These 118 plants have a total of 210 cement kilns. We estimate that five new kilns will be subject to the proposed amendments by the end of the 5th year after promulgation of the amendments. We assumed that all new kilns would be at brownfield sites, because this assumption avoids an underestimation of costs for THC monitoring.

B. What Are the Air Quality Impacts?

The variation in hydrocarbon emissions from kilns makes it difficult to quantify impacts on a national basis with any accuracy. Reported hydrocarbon emission test results range from less than 1 ppmv dry basis (at 7 percent oxygen) to over 140 ppmv dry basis (Docket A–92–53) measured at the main kiln

For 52 kilns tested for hydrocarbon emissions (Docket A–92–53), approximately 25 percent had emissions of hydrocarbons that exceeded the proposed 20 ppmv THC limit at the main stack. The average hydrocarbon emissions for the kilns exceeding 20 ppmv was 62.5 ppmv. Based on a model kiln producing 650,000 tpy of clinker, emissions reductions as a result of the standard would vary depending on the combustion practices in use. Kilns operating at or just above the 20 ppmv main stack limit would experience little or no emissions reductions as a result of the proposed emissions limits. For an existing kiln exceeding the proposed 20 ppmv emissions limit and currently emitting near the average hydrocarbon level of 62.5 ppmv, the improvement in combustion practices would result in a reduction of about 141 tpy for a 650,000 tpy kiln. A kiln with poor combustion practices and emitting at the highest reported hydrocarbon level of 142 ppmv would experience emissions reductions of over 403 tpy.

The proposed HCl emissions limits are based on current operation practices, and we are not able to quantify emissions reductions for existing sources. For new sources for which we are proposing a quantified standard, we estimate the emissions reductions for a typical new kiln to be 107 tpy per kiln. Based on five new kilns becoming subject to the final NESHAP, the emissions reductions will be 535 tpy of HCl in 5 years.

The proposed HCl standards for new sources will also result in concurrent control of SO_2 emissions. The SO_2 emissions reductions for a typical new kiln will be 322 tpy. The emissions reductions 5 years after promulgation of the final standards will be 1,610 tpy. Note that we have determined that reducing SO_2 emissions also results in a reduction in fine particle emissions because some SO_2 is converted to sulfates in the atmosphere. Therefore, the proposed HCl standards will also result in a reduction in emissions of fine PM.

In addition to the direct air emissions impacts, there will be secondary air impacts that result in the increased electrical demand generated by new sources' control equipment. These emissions will be an increase in emissions of pollutants from utility boilers that supply electricity to the portland cement facilities. We estimate these increases to be 11 tpy of NO_X, 6 tpy of CO, 19 tpy of SO_2, and 0.55 tpy of PM at the end of the 5th year after promulgation.

C. What Are the Water Quality Impacts?

There should be no water quality impacts for the proposed amendments. The requirement for new sources to use alkaline scrubbers to control HCl will produce a scrubber slurry liquid waste stream. However, we are assuming the scrubber slurry produced will be dewatered and disposed of as solid waste. Water from the dewatering process will be recycled back to the scrubber.

D. What Are the Solid Waste Impacts?

The only solid waste impact will be the generation of scrubber slurry that is assumed to be dewatered and disposed of as solid waste. The amount of solid waste produced is estimated as 228,000 tpy in the 5th year after promulgation of the amendments.

E. What Are the Energy Impacts?

Requiring new kilns to install and operate alkaline scrubbers will result in increased energy use due to the electrical requirements for the scrubber and increased fan pressure drops. We estimate the additional electrical demand to be 4.9 million kWhr per year by the end of the 5th year.

F. What Are the Cost Impacts?

The proposed rule amendments would require all existing sources (area and major) to install and operate monitors (if not already present) and perform performance tests. In our cost analysis, we assumed that all existing facilities would elect to meet the alternative CO emission limits. Therefore, the impacts include the costs to install and operate a CO monitor and the cost for a performance test to measure THC every 5 years. We estimated a range of annualized capital costs based on 3 percent and 7 percent social discount factors.

The total capital cost for existing sources is estimated to be $159,545 per kiln (2003 dollars), and $33.5 million nationally, based on 210 operating kilns. The total annualized cost per kiln is estimated to range from $37,500 to $41,700 depending on the discount factor. Total national annualized costs are estimated to range from $7.9 million to $8.8 million.

The cost estimates above assume all kilns will have to install a CO monitor. This assumption may significantly overestimate the costs because CO monitors may already be installed at some existing kilns, either as a requirement under a State permit or as a means of optimizing combustion control. In addition, the estimates above do not take into account any reduced fuel costs resulting from improved combustion management.

The costs for new sources include the CO monitor, an alkaline wet scrubber, and THC and performance tests. The total capital cost per kiln is estimated to be $2.3 million. The cumulative capital cost in the fifth year is estimated to be $11.5 million. The estimated total annualized cost per new kiln will range from $741,300 to $800,800. National annualized costs will range from $3.7 million to $4.0 million.

G. What Are the Economic Impacts?

The EPA conducted an economic analysis of the proposed amendments to the NESHAP which have cost

implications. These are the requirements to test for THC and monitor for THC or CO for new and existing kilns or in-line raw mill/kilns, and the cost to install and operate a wet scrubbing system for new kilns or in-line raw mill/kilns. The EPA assessed earlier portland cement regulations with greater per source costs, and those costs did not have a significant effect on the cost of goods produced. Since the conditions that produced those conclusions still exist today, EPA asserts these new regulations will not have a discernible impact on the portland cement market.

We note that the highest cost per kiln resulting from the proposed amendments will be the cost of alkaline scrubbers for new kilns. This additional requirement represents less than 1.5 percent of the expected revenue stream for a typical new kiln. We do not consider this to be economically significant.

VI. Statutory and Executive Order Reviews

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 Office of Management and Budget (OMB) review 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.

It has been determined that the proposed amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the existing rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control No. 2060–0416. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1801.02) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr.*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1801.05.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

These requirements include installation of a continuous monitor at all existing sources and a performance test to measure THC, and the requirement for new sources to a performance test to measure HC. We expect these additional requirements to affect 118 facilities over the first 3 years. The estimated annual average burden is outlined below.

Affected entity	Total hours	Labor costs	Total annual O&M costs	Total costs
Industry	15,413	$983,325	$791,800	$2,500,000
Implementing Agency	502	30,037	NA	48,037

Burden means the 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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for the proposed amendments, which includes this ICR, under Docket ID No. OAR–2002–0051. Submit any comments related to the ICR for the proposed amendments to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 2, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by January 3, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed amendments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 impact of today's proposed rule amendments on small entities, small entity is defined as: (1) A small business that has fewer than 750 employees; (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 amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by the proposed rule amendments are small businesses. We determined there are six or seven small businesses in this industry out of a total of 44. Each small business operates a single plant with one or more kilns. The total annualized cost per kiln is estimated to range from $37,500 to $41,700 depending on the discount factor. The revenue for the entire small business sector is estimated to be around $260 million (2003 dollars). The compliance cost is estimated to be less than 0.3 percent of small business revenue. For new sources, which will incur higher costs because new kilns must install alkaline scrubbers for control of HC1 emissions, the cost of control is estimated to be less than 1.5 percent of the expected revenue from a new kiln. We currently do not have any information on plans for small businesses to build new kilns.

Although the proposed rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the proposed amendments on small entities. The proposed emission standards are representative of the floor level of emissions control, which is the minimum level of control allowed under the CAA. Further, the costs of required performance testing and monitoring have been minimized by specifying emissions limits and monitoring parameters in terms of surrogates for HAP emissions, which are less costly to measure. The EPA is also allowing affected firms up to 1 year from the effective date of the final rule amendments to comply, which could lessen capital availability concerns.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires 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 the proposed rule 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, nor do the amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, today's proposed rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (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.''

The proposed rule amendments do not have federalism implications. The proposed rule amendments 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, because State and local governments do not own or operate any sources that would be subject to the proposed rule amendments. Thus, Executive Order 13132 does not apply to the proposed rule 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 the proposed rule amendments from State and local officials.

F. 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 9, 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.'' The proposed rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to today's action. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

G. 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 rule. The proposed rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy, Supply, Distribution, or Use

The proposed rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed rule amendments involve technical standards. The EPA proposes to cite Method 25A of 40 CFR part 60, appendix A; Performance Specification (PS) 4B of 40 CFR part 60, appendix B; and ASTM Method D6735–01 (as an alternative to EPA Methods 26/26A, 320, and 321).

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for PS 4B and ASTM Method D6735–01.

The standard ASTM D6735–01, ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method,'' is cited as an acceptable alternative to EPA Method 320 to measure hydrogen chloride emissions from mineral calcining exhaust sources for the purposes of the final NESHAP, provided that the additional requirements described in paragraphs (b)(5)(iii)(A) through (F) of 40 CFR 63.1349 are followed. Also, ASTM D6735–01 is itself a VCS.

In addition to the VCS EPA cites in the proposed rule amendments, the search for emissions measurement procedures identified two additional VCS. The EPA determined that both of the standards identified for measuring air emissions or surrogates subject to emissions standards in the proposed amendments were impractical alternatives to EPA test methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the two methods can be found in Docket ID No. OAR–2002–0051.

Section 63.1349 of 40 CFR part 63 lists the EPA testing methods included in the proposed rule amendments. Under 40 CFR 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in the proposed rule amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, and Reporting and recordkeeping requirements.

Dated: November 21, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the 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 LLL—[AMENDED]

1. Section 63.1341 is amended by adding the following definition in alphabetical order to read as follows:

§ 63.1341 Definitions.

* * * * *

Midkiln gas sampling system means a device which the Administrator determines on a case-by-case basis diverts a sample of kiln gas that contains levels of carbon monoxide (CO) or hydrocarbons representative of the levels in the kiln.

* * * * *

2. Section 63.1342 is revised to read as follows:

§ 63.1342 Standards: General.

Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to subpart LLL.

3. Section 63.1343 is amended by:

a. Revising paragraph (a);

b. Adding paragraphs (b)(4) through (b)(6);

c. Revising paragraph (c)(4);

d. Adding paragraphs (c)(5) and (c)(6);

e. Revising paragraphs (e) introductory text and (e)(2); and

f. Adding paragraph (e)(3) and (f) to read as follows:

§ 63.1343 Standards for kilns and in-line kiln/raw mills.

(a) *General.* The provisions in this section apply to each kiln, each in-line kiln/raw mill, and any alkali bypass associated with that kiln or in-line kiln/raw mill. All gaseous and D/F emission limits are on a dry basis, corrected to 7 percent oxygen. All total hydrocarbon (THC) emission limits are measured as propane. The block averaging periods to demonstrate compliance are hourly for 100 parts per million by volume (ppmv) CO limit and both the 10 and 20 ppmv total hydrocarbon (THC) limits, and monthly for 50 ppmv THC limits.

(b) * * *

(4)(i) Contain more than 20 ppmv THC from the main stack if the source has no alkali bypass or midkiln gas sampling system; or

(ii) Contain more than 100 ppmv CO in the main stack if the source has no alkali bypass or midkiln gas sampling system. However, the source must demonstrate during the performance test that the main stack gas contains no more than 20 ppmv THC.

(5)(i) Contain more than 10 ppmv THC in the alkali bypass or midkiln gas sampling system; or

(ii) Contain more than 100 ppmv CO in the alkali bypass or midkiln gas sampling system. However, the source must demonstrate during the performance test that the alkali bypass or midkiln gas sampling system gas contains no more than 10 ppmv THC.

(6) Contain more than 15 ppmv hydrogen chloride (HCl) if the source is a new or reconstructed source that commenced construction after December 2, 2005, unless the source demonstrates a 90 percent reduction in HCl emissions measured across an add-on control device, such as an alkaline scrubber. New sources that commenced construction prior to December 2, 2005, must meet the operating limits specified in § 63.1344(f).

* * * * *

(c) * * *

(4)(i) Contain more than 20 ppmv THC in the main stack if there is no alkali bypass or midkiln gas sampling system; or

(ii) Contain more than 50 ppmv THC and 100 ppmv CO in the main stack gas if there is no alkali bypass or midkiln gas sampling system. However, the source must demonstrate during the performance test that the main stack gas contains no more than 20 ppmv THC.

(5)(i) Contain more than 50 ppmv THC in the main stack and 10 ppmv THC in the alkali bypass or midkiln gas sampling system, or

(ii) Contain more than 50 ppmv THC in the main stack and 100 ppmv CO in the alkali bypass or midkiln gas sampling system. However, the source must demonstrate during the performance test that the alkali bypass or midkiln gas sampling system contains no more than 10 ppmv THC.

(6) Contain more than 15 ppmv HCl if the source is a new source that commenced construction after December 2, 2005, unless the source demonstrates a 90 percent reduction in HCl emissions measured across an add-on control device, such as an alkaline scrubber. New sources that commenced construction prior to December 2, 2005 must meet the operating limits specified in § 63.1344(f).

* * * * *

(e) *Greenfield/area sources.* No owner or operator of a greenfield kiln or a greenfield in-line kiln/raw mill at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

* * * * *

(2)(i) Contain more than 20 ppmv THC in the main stack if there is no alkali bypass or midkiln gas sampling system; or

(ii) Contain more than 50 ppmv THC and a 100 ppmv CO in the main stack. However, the source must demonstrate at performance test that the main stack gas contains no more than 20 ppmv THC.

(3)(i) Contain more than 50 ppmv THC in the main stack and 10 ppmv THC from the alkali bypass or midkiln gas sampling system; or

(ii) Contain 50 ppmv THC in the main stack and 100 ppmv CO in the alkali bypass or midkiln gas sampling system. However, the source must demonstrate at its performance test that the alkali bypass or midkiln gas sampling system contains no more than 10 ppmv THC limit.

(f) *Existing, reconstructed, or new brownfield/area sources.* No owner or operator of an existing, reconstructed, or new brownfield kiln or an existing, reconstructed, or new brownfield in-line kiln/raw mill at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere any gases which:

(1)(i) Contain more than 20 ppmv THC in the main stack if the source has no alkali bypass or midkiln gas sampling system; or

(ii) Contain more than 100 ppmv CO if the source has no alkali bypass or midkiln gas sampling system. However, the source must demonstrate at performance test that the gas in the main stack contains no more than 20 ppmv THC.

(2)(i) Contain more than 10 ppmv THC in the alkali bypass or midkiln gas sampling system; or

(ii) Contain 100 ppmv CO in the alkali bypass or midkiln gas sampling system. However, the source must demonstrate at performance test that the gas in the alkali bypass or midkiln gas sampling system contains no more than 10 ppmv THC.

4. Section 63.1344 is amended by adding paragraph (f) to read as follows:

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

* * * * *

(f) Existing kilns and in-line kilns/raw mills must continuously operate the cement kiln under normal operating conditions and operate a particulate control device to capture HCl present in or adsorbed on the kiln particulate, including particulate in the alkali bypass (if present).

5. Section 63.1349 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(4);

c. Adding paragraphs (b)(5) and (b)(6);

d. Revising paragraph (c); and

e. Removing paragraph (f) to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(b) Performance tests to demonstrate initial compliance with this subpart shall be conducted as specified in paragraphs (b)(1) through (6) of this section.

* * * * *

(4) The owner or operator of an affected source subject to limitations on emissions of THC shall demonstrate initial compliance with the THC limit as follows:

(i) If the owner or operator elects not to meet the alternative CO emission limit of 100 ppmv, they must demonstrate compliance with the appropriate THC emissions limit by operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 of this chapter and meet the quality assurance procedures specified in procedure 1 of appendix F to this part.

(ii) If the source elects to comply with a THC emission limit by meeting the alternative CO emissions limit, they must demonstrate compliance by operating a continuous emission monitor in accordance with Performance Specification 4B of appendix B to part 60 of this chapter and meet the quality assurance procedures specified in procedure 1 of appendix F to this part. They must also demonstrate compliance with the appropriate THC emissions limit during the performance test using EPA Method 25A of appendix A to part 60 of this chapter. They must calibrate with propane and report the THC results as propane.

(iii) The duration of the performance test(s) shall be 3 hours, and the average THC/CO concentration during the 3-hour performance test shall be calculated. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(5) To determine compliance with an emission limit for HCl you must use one of the following test methods:

(i) Method 26/26A of appendix A to part 60 of this chapter. Method 26A must be used when HCl could be associated with PM (for example, the

association of HCl with water droplets emitted by sources controlled by a wet scrubber); otherwise you may use Method 26.

(ii) Method 320 or 321 of appendix A to part 63 of this chapter.

(iii) ASTM Method D6735–01, Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method, provided that the provisions in paragraphs (b)(5)(iii)(A) through (F) of this section are followed.

(A) A test must include three or more runs in which a pair of samples is obtained simultaneously for each run, according to section 11.2.6 of ASTM Method D6735–01.

(B) You must calculate the test run standard deviation of each set of paired samples to quantify data precision, according to Equation 1 of this section:

$$RSD_a = (100)\ \text{Absolute Value}\left[\frac{C1_a - C2_a}{C1_a + C2_a}\right] \qquad \text{Eq. 1}$$

Where:

RSD_a = The test run relative standard deviation of sample pair a, percent.

$C1_a$ and $C2_a$ = The HCl concentrations, milligram/dry standard cubic meter(mg/dscm), from the paired samples.

(C) You must calculate the test average relative standard deviation according to Equation 2 of this section:

$$RSD_{TA} = \frac{\sum_{a=1}^{P} RSD_a}{p} \qquad \text{(Eq. 2)}$$

Where:

RSD_{TA} = The test average relative standard deviation, percent.

RSD_a = The test run relative standard deviation for sample pair a.

p = The number of test runs, ≥3.

(D) If RSD_{TA} is greater than 20 percent, the data are invalid and the test must be repeated.

(E) The post-test analyte spike procedure of section 11.2.7 of ASTM Method D6735–01 is conducted, and the percent recovery is calculated according to section 12.6 of ASTM Method D6735–01.

(F) If the percent recovery is between 70 percent and 130 percent, inclusive, the test is valid. If the percent recovery is outside of this range, the data are considered invalid, and the test must be repeated.

(6) To determine compliance with the 90 percent reduction for HCl, you must measure the HCl concentration at the inlet and outlet of the alkaline scrubber using one of the test methods specified in paragraph (b)(4) of this section. The concentrations should be determined on a dry basis, corrected to 7 percent oxygen. The percent reduction is then calculated as the difference between the inlet and outlet concentration divided by the inlet concentration times 100.

(c) Except as provided in paragraph (e) of this section, performance tests required under paragraphs (b)(1) through (b)(2) and (b)(4) through (b)(5) of this section shall be repeated every 5 years, except the owner or operator of a kiln, in-line kiln/raw mill, or clinker cooler is not required to repeat the initial performance test of opacity for the kiln, in-line kiln/raw mill, or clinker cooler.

* * * * *

6. Section 63.1350 is amended by:

a. Revising paragraphs (h) and (n); and

b. Adding paragraph (o) to read as follows:

§ 63.1350 Monitoring requirements.

* * * * *

(h) The owner or operator of an affected source subject to a limitation on THC emissions under this subpart shall comply with the monitoring requirements of paragraphs (h)(1) through (3) of this section to demonstrate continuous compliance with the THC emission standard:

(1) An owner or operator shall install, calibrate, maintain, and operate a continuous THC emissions monitor meeting the requirements of Performance Specification 8A of appendix B to part 60 of this chapter and meet the quality assurance procedures specified in procedure 1 of appendix F to this part. If the owner or operator elects to meet an alternative CO emission limit, then they must install, calibrate, maintain, and operate a continuous CO emissions monitor meeting the requirements of Performance Specification 4B of appendix B to part 60 of this chapter and meet the quality assurance procedures specified in procedure 1 of appendix F to this part.

(2) The owner or operator of a greenfield raw material dryer, the main exhaust of a greenfield kiln, or the main exhaust of a greenfield in-line kiln/raw mill, that elects to meet the alternative Co emissions limit is not required to calculate hourly rolling averages in accordance with section 4.9 of Performance Specification 8A.

(3) Any CO or THC emissions that exceed the emission limits in § 63.1343 using the averaging periods specified in § 63.1343 is a violation of the standard.

* * * * *

(n) An owner or operator of an affected source subject to HCl emissions must comply by establishing and complying with the following operating parameter limits for a wet scrubber.

(1) If your source is equipped with a high energy wet scrubber such as a venturi, hydrosonic, collision, or free jet wet scrubber, you must establish a limit on minimum pressure drop across the wet scrubber on an hourly rolling average as the average of the test run averages.

(2) If your source is equipped with a low energy wet scrubber such as a spray tower, packed bed, or tray tower, you must establish a minimum pressure drop across the wet scrubber based on manufacturer's specifications. You must comply with the limit on an hourly rolling average.

(3) If your source is equipped with a low energy wet scrubber, you must establish a limit on minimum liquid feed pressure to the wet scrubber based on manufacturer's specifications. You must comply with the limit on an hourly rolling average.

(4) You must establish a limit on minimum pH on an hourly rolling average as the average of the test run averages.

(5) You must establish limits on either the minimum liquid to gas ratio or both the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average as the average of the test run averages.

(o) An owner or operator of an affected source subject to an HCl emissions limit and using a dry scrubber must comply by establishing and meeting all of the following operating parameter limits specified in paragraphs (o)(1) through (o)(3) of this section.

(1) Minimum sorbent feedrate. You must establish a limit on minimum sorbent feedrate on an hourly rolling average as the average of the test run averages.

(2) Minimum carrier fluid flowrate or nozzle pressure drop. You must establish a limit on minimum carrier fluid (gas or liquid) flowrate or nozzle pressure drop based on manufacturer's specifications.

(3) Sorbent specifications. (i) You must specify and use the brand (*i.e.*, manufacturer) and type of sorbent used during the comprehensive performance test until a subsequent comprehensive performance test is conducted, unless you document in the site-specific performance test plan required under § 63.1207(e) and (f) key parameters that affect adsorption and establish limits on those parameters based on the sorbent used in the performance test.

(ii) You may substitute at any time a different brand or type of sorbent provided that the replacement has equivalent or improved properties compared to the sorbent used in the performance test and conforms to the key sorbent parameters you identify under paragraph (o)(3) of this section. You must record in the operating record documentation that the substitute sorbent will provide the same level of control as the original sorbent.

7. Section 63.1351 is amended by adding paragraphs (c) and (d) to read as follows:

§ 63.1351 Compliance dates.

* * * * *

(c) The compliance date for an affected source that commenced construction on or before December 2, 2005, subject to the revised THC and HCl emissions limits proposed on December 2, 2005, will be 1 year after publication of the final amendments.

(d) The compliance date for an affected source that commenced construction after December 2, 2005, subject to the revised THC and HCl emissions limits proposed on December 2, 2005, will be startup or the effective date of the final amendments, whichever is later.

8. Section 63.1356 is amended by adding paragraphs (a)(1) and (2) to read as follows:

§ 63.1356 Exemption from new source performance standards.

(a) * * *

(1) Kilns and in-line kiln/raw mills, as applicable, under 40 CFR 60.60(b), located at area sources are subject to PM and opacity limits and associated reporting and recordkeeping, under 40 CFR part 60, subpart F.

(2) Greenfield raw material dryers, as applicable under 40 CFR 60.60(b), located at area sources, are subject to opacity limits and associated reporting and recordkeeping under 40 CFR part 60, subpart F.

* * * * *

[FR Doc. 05–23419 Filed 12–1–05; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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Military Quality of Life and Veterans Affairs Appropriations Act, 2006 (Nov. 30, 2005; 119 Stat. 2372)

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